



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 3638/3575

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**MUR 3578**

**COMPLAINT - AUGUST 12, 1992**

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OGC 6081



Democratic National Committee

MUR 3578

August 11, 1992

92 AUG 12 AM 10:28

Lawrence Noble, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20003

Dear Mr. Noble:

Enclosed with this letter is a complaint by the Democratic National Committee against the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer; the Republican Challengers' Committee and Robert E. Miller Jr., as treasurer; and Wesley West, an individual, pursuant to 11 C.F.R. §111.4.

If you have any questions concerning this complaint, please contact me at (202) 479-5112.

Sincerely,

Eric London  
Assistant Counsel

BEFORE THE FEDERAL ELECTION COMMISSION  
OF THE UNITED STATES OF AMERICA

Complaint: Violations of 2 U.S.C. §§ , 433(b)(2), 434(a)(1), 434(b), 441a(a)(1)(C), 441a(f), 441b(a), and 11 C.F.R. §§ 102.2(a)(1)(ii), 102.2(b), 104.3, 104.14(a) 110.1(d), 110.9, 114.2(a).

Complainant: Democratic National Committee

Respondents: Presidential Victory Committee, Robert E. Miller, Treasurer; Republican Challengers' Committee, Robert E. Miller, Treasurer; and Wesley West.

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INTRODUCTION

Pursuant to 2 U.S.C. §437g(a)(1) and Title 11 of the C.F.R. §111.4, the Democratic National Committee ("DNC") brings this complaint against the Presidential Victory Committee ("PVC") and Robert E. Miller, Jr., as treasurer; and the Republican Challengers' Committee ("RCC") and Robert E. Miller, Jr., as treasurer; and Wesley West, a individual contributor to PVC. This complaint asserts that the organizations founded, chaired, and controlled by Floyd G. Brown, specifically the Presidential Victory Committee and the Republican Challengers' Committee, as well as Wesley West, have engaged in activities prohibited by the Federal Election Campaign Act of 1971, as amended, (the "Act") and regulations promulgated thereunder. The multiple violations committed by the organizations Floyd Brown operates for the purpose of, inter alia, furthering the re-election efforts of President Bush, and the violation committed by Wesley West, are more fully detailed below.

DISCUSSION

1. Upon information and belief, the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, accepted contributions in excess of the Act's limits in violation of 2 U.S.C. §441a(f) and 11 C.F.R. §110.9. Furthermore, Wesley West contributed amounts in excess of the Act's limits in violation of 2 U.S.C. §441a(a)(1)(C) and 11 C.F.R. §110.1(d).

According to PVC's April 20, 1992 (Amended) and June 20, 1992 FEC reports<sup>1</sup>, PVC accepted aggregate contributions of \$14,000 during the 1992 calendar year from Wesley West, an individual whose address is listed on the said reports as 3240 Chevy Chase Drive, Houston, Texas, 77019. The Act permits individuals to contribute only \$5,000 per calendar year to a political committee other than an authorized committee or national party committee. Accordingly, the making of such contributions by an individual exceeds the statutory limit, resulting in a \$9,000 excessive contribution by Mr. West in violation of 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. §110.1(d). In addition, the acceptance of such excessive contributions by PVC constitutes a violation of 2 U.S.C. §441a(f) and 11 C.F.R. §110.9.

2. Upon information and belief, PVC failed to report PVC's affiliation with the Republican Challengers' Committee as required by 2 U.S.C. §433(b)(2) and 11 C.F.R. §§102.2(a)(1)(ii) and 102.2(b).

A review of the information contained in the FEC reports filed by PVC and Republican Challengers' Committee ("RCC")<sup>2</sup>, and Robert E. Miller, Jr., as treasurer of both committees, and other facts, reveals that pursuant to 2 U.S.C. §441a(a)(5) and 11 C.F.R. §§100.5(g)(2) and (3), PVC and RCC were established, and are financed, maintained and controlled by the same person or group of persons and are thereby affiliated, a fact which neither PVC nor RCC has disclosed as required by the Act and the regulations promulgated thereunder. See 2 U.S.C. §433(b)(2) and 11 C.F.R. §§102.2(a)(1)(ii) and 102.2(b).

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<sup>1</sup>PVC registered with the Federal Election Commission as a political committee on February 10, 1992. (FEC ID No. C00260299). PVC amended its Statement of Organization on March 23, 1992.

<sup>2</sup>RCC registered with the FEC on December 5, 1989 (FEC ID No. C00239822).

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In particular, the affiliation of PVC and RCC is demonstrated by several factors, including, but not limited to:

- 9 6 0 4 3 7 9 8 1
- A. **Overlapping officers and employees.** Both committees employ the same individual in an executive capacity. Floyd Brown, founder and chairman of PVC, is also the chairman of RCC (See Washington Post article dated July 9, 1992 and attached hereto as Exhibit A. See also RCC July 20, 1992 FEC Report - Itemized Receipts and January 31 FEC Year-End Report for 1989 - Itemized Receipts). In addition, both committees share the same treasurer, Robert E. Miller, Jr., whose address is listed on both the PVC and RCC Statements of Organization as 1200 Third Avenue, Suite 700, San Diego, California 92101. These overlapping relationships between the two committees suggest a formal and ongoing relationship that is further supported by other factors.
- B. **Shared operations.** An individual calling PVC at (202) 546-1992 on July 31, 1992 and inquiring about contributing to PVC was told by the individual answering that number that PVC and RCC were affiliated committees and that she could contribute to both committees by a single check. See Affidavit of Leslie J. Kerman, attached hereto as Exhibit B. In fact, until recently, the two committees shared the same institution for their depository. PVC's original Statement of Organization, filed on February 10, 1992 and RCC's Statement of Organization, filed on December 5, 1989, list The George Mason Bank, Main Street, Fairfax, Virginia as their depository.<sup>3</sup>
- C. **Extensive use of common vendors.** According to the Reports of Receipts and Disbursements on file with the FEC, approximately 80% of PVC's total disbursements from 1989 to 1992 (approximately \$658,000) have been paid to vendors used extensively by RCC. A list of such common vendors includes those set forth below.

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<sup>3</sup> Although PVC has subsequently amended its Statement of Organization to reflect a new depository, PVC's most recent monthly report continues to reflect check charges from The George Mason Bank. See PVC's July 20, 1992 Report of Receipts and Disbursements -- Itemized Independent Expenditures.

- ▶ Response Dynamics, Inc.  
2070 Chain Bridge Road, Suite 400  
Vienna, Virginia 22182
- ▶ Direct Response Data  
2070 Chain Bridge Road, Suite 400  
Vienna, Virginia 22182
- ▶ American Telemarketing Group  
2070 Chain Bridge Road, Suite 400  
Vienna, Virginia 22182
- ▶ Fulfillment Management Service  
1150 International Parkway  
Fredericksburg, MD 22405
- ▶ Best Lists, Inc.  
2070 Chain Bridge Road, #400  
Vienna, Virginia 22182
- ▶ Washington Intelligence Bureau, Inc.  
2727 Merillee Drive  
Fairfax, Virginia 22031
- ▶ Mid America Printing  
1150 International Parkway  
Fredericksburg, MD 22405

- 9 6 0 4 3 7 0 8 3 2
3. Upon information and belief, PVC failed to disclose contributions or debts and obligations, and/or accepted contributions from illegal sources in violation of 2 U.S.C. §§ 434(b), 441a(f), 441b(a) and 11 C.F.R. §§ 104.3, 110.9, and 114.2(a).

According to PVC's March 20, 1992 FEC Report (PVC's initial report), PVC received contributions totalling \$27,304.00 (consisting of \$6,600.00 in itemized receipts from 12 donors and \$20,704.00 in unitemized receipts) apparently through a direct mail campaign. (See PVC March 20, 1992 FEC report which states that "A Best Effort" was performed on all direct mail sent for this committee"). However, according to the March 20 report, the only disbursement made by PVC during this same reporting period was a \$510.55 independent expenditure for postage on behalf of George Bush. As a practical matter, it would be impossible for a committee to raise \$20,704.00 through a direct mail campaign while incurring only a single expense (specifically, \$510.55 for



postage), with no disbursements and no debts or obligations in connection with any other operating costs such as the buying or renting of mailing lists, mailing house sorting and folding, printing, computer and printer leasing, etc.

Although PVC's subsequent reports disclose disbursements to, among others, the vendors mentioned in Section 2, above, for purposes that suggest a direct mail effort, the discrepancy in time and the lack of disclosure or disbursements during the first period when monies were raised, suggest that PVC is receiving billing terms from its vendors that are extraordinary for a new organization with no assets. Either PVC is receiving an extension of credit from its vendors that, on its face, appears to be outside the ordinary course of business, or PVC's vendors have received the personal guaranty or personal assurance of individuals that PVC will pay its obligations.

In either case, PVC has either failed to disclose contributions -- either from its vendors or from individuals who have ensured payment to the vendors -- or PVC has failed to disclose debts and obligations. Accordingly, failure to disclose such contributions and/or debts and obligations constitutes a violation of 2 U.S.C. §434(b) and 11 C.F.R. §104.3. In addition, should any entities providing in-kind contributions, advances or guarantees for PVC be corporations, PVC and such entities would be in violation of 2 U.S.C. §441a(f) and §441b(a), and 11 C.F.R. §110.9 and 114.2(a), respectively, which strictly prohibit both the acceptance and making of contributions of corporate monies.

**4. Upon information and belief, PVC violated 2 U.S.C. §434(a)(1) and 11 C.F.R. §104.14(a).**

Specifically, FEC Monthly Reports for March 20, 1992 (Amended); April 20, 1992; April 20, 1992 (Amended); June 20, 1992 and July 20, 1992 reports do not contain the signature of PVC's treasurer, Robert E. Miller, Jr. or assistant treasurer, David Bossie. Rather, it appears that the reports were improperly signed by an individual named "Chris Miller" in violation of 2 U.S.C. § 434(a)(1) and 11 C.F.R. §104.14(a). See Exhibit C - copy of summary page of FEC monthly report dated March 20, 1992 signed by Robert E. Miller, Jr., as well as copies of summary pages of FEC monthly reports dated March 20, 1992 (amended); April 20, 1992; April 20, 1992 (amended); June 20, 1992 and July 20, 1992, apparently signed by "Chris Miller".

CONCLUSION

As is evidenced herein, the organizations which Floyd Brown directs for the purpose of furthering George Bush's re-election efforts have engaged in a series of ongoing activities in violation of federal campaign election laws. Such conduct demonstrates a pattern and practice of disregard for such laws and, consequently, indicates that such respondents shall continue to engage in such unlawful activities which are likely to have a detrimental and irreparable effect on the 1992 Presidential election process unless enjoined immediately. Therefore, the Democratic National Committee urges the Commission to take immediate action to enjoin the respondents' unlawful activities and to prevent further violations of the Act.

In addition, the Democratic National Committee urges the Commission to take immediate action to prevent future violations by innocent, unknowing contributors who may be lured into contributing to both PVC and RCC, and as a result exceeding their individual contribution limits. In this matter, the Democratic National Committee respectfully requests that the Commission immediately notify those individuals who have contributed to either PVC or RCC or to both committees regarding the affiliation of the committees. Such an effort to contact contributors is clearly feasible since the Commission has access to PVC and RCC reports disclosing contributors donating \$200 or more, as well as the authority to subpoena PVC and RCC records in connection with unitemized receipts.

Respectfully submitted,



Carol C. Darr  
General Counsel



Eric D. London  
Assistant Counsel

Sworn to and subscribed before me this 11<sup>th</sup> day of August, 1992.

  
Notary Public

My Commission Expires: My Commission Expires December 14, 1994

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# Hitting Clinton With Flowers by Wire

## Operative Behind Horton Ad to Promote Call-In for 'Intimate' Tapes

By Howard Kurtz  
Washington Post Staff Writer

The Republican operative who brought you the Willie Horton ad is back, and this time his subject is Gennifer Flowers.

Floyd G. Brown, who heads an independent group promoting President Bush's reelection, plans to air attack ads next week about Flowers's allegation that she had a 12-year affair with Arkansas Gov. Bill Clinton. The ad urges viewers to call a Nevada number, set up by Brown, "to hear Flowers's tapes of their intimate conversations."

The 30- and 60-second television spots combine two of the most noteworthy features of the 1992 campaign: new technology (a phone service that the ad says will cost \$4.99 per call) and tabloid sleaze (Flowers first sold her allegations to the supermarket magazine Star).

Brown, who has scheduled a news conference this morning, is recycling a technique he used with the Horton ad, trying to parlay a modest television buy

### THE AIR WARS

into millions of dollars' worth of free publicity (including articles like this one). It is also a fund-raising gimmick; Brown said he will make about a 50 percent profit on each call and will use the proceeds to buy more advertising.

"What really happened between Bill Clinton and Gennifer Flowers?" the ad says. "Did he lie about their affair? Did he try a coverup? Call [the number] and get to know Bill Clinton the way Gennifer Flowers did."

Brown said he has bought time on CNN's New York stations during the Democratic National Convention but would not disclose the cost.

Bush campaign spokeswoman Torie Clarke said yesterday that "we have absolutely nothing to do with Floyd Brown. We have put as much distance between ourselves and Floyd Brown as legally and otherwise possible. . . . We do not condone it in any way. We are not interested in the sleazy stuff at all."

Brown replied that "the Bush campaign has its own problems. If they don't want to engage their enemy, I stand ready to do that." He said the ad was legitimate because "the character of a potential president of the United States is very important."

Frank Greer, media consultant for Clinton's Democratic presidential campaign, said that "this is exactly the kind of sleazy, negative politics that people in America are sick and tired of. It is the responsibility of the White House to have this kind of trash taken off the air." Clinton adviser Betsey Wright called it "despicable" that Brown "is trying to make money from Gennifer Flowers's lies," noting that experts hired by two news organizations found the tapes had been selectively edited.

Clinton, while acknowledging his marriage has had troubled periods, has repeatedly denied Flowers's allegations.

Bush's 1988 campaign disavowed the Horton ad but was widely seen as benefiting from its racial overtones. The ad pictured Horton, a black convict who raped a white woman while on a furlough program under then-Massachusetts Gov. Michael S. Dukakis, the Democratic presidential nominee. "When we're through, people are going to think that Willie Horton is Michael Dukakis's nephew," Brown predicted in 1988.

A Federal Election Commission inquiry found some discussions between a 1988 Bush campaign official and the producer of the Horton ad but closed the case without taking action.

Last fall, Bush dissociated himself from another Brown ad that assailed Sens. Edward M. Kennedy (D-Mass.), Joseph R. Biden Jr. (D-Del.) and Alan Cranston (D-Calif.) during the Clarence Thomas confirmation battle.

Brown, who once worked for the presidential campaign of Sen. Robert J. Dole (R-Kan.), is now chairman of the Presidential Victory Committee, a political action committee that hopes to raise \$8 million this year through direct mail. He also raises money under the name Citizens for Bush, telling donors in a letter this month, "I am hoping to launch a project that could affect the entire election. . . . This is a highly confidential, very sensitive project."

Bobby Burchfield, the Bush campaign's general counsel, has asked Brown in a letter to "immediately cease" soliciting money under those names "or any similar designation that raises the possibility of confusing your efforts with those of Bush-Quayle '92." Burchfield also disavowed any link in letters to Brown's donors, identified through FEC records. Brown said his mailings make clear that he is not part of the Bush campaign.

While the White House has been trying to make family values a prime issue, one GOP strategist predicted the ad will backfire. "The public doesn't understand this independent-expenditure business," he said. "It looks like the Republicans are taking a cheap shot."

The allegations by Flowers, a nightclub singer and former Arkansas state employee, disrupted Clinton's campaign before the New Hampshire primary. At a news conference, she played excerpts of what she said were taped phone conversations between her and Clinton, but never released copies.

Clinton said Flowers was just a "friendly acquaintance." He in effect confirmed that his voice was on the tapes by apologizing to New York Gov. Mario M. Cuomo (D) for having said that Cuomo "acts like" a member of the Mafia.

The Brown ad includes a clip of Flowers saying, "Listen to the tape excerpts. Judge for yourself if this is the way a man talks to a woman that is just a friendly acquaintance."

Skinner's announcement yesterday's senior staff meeting sent a ripple of disquiet through a camp; White House operation by Bush's plummet in the self-acknowledged inability to communicate a positive message to American voters.

Critics of Skinner's departure argued that the White House was crucial in an election should not be given to a called an inexperienced candidate.

Kean, however, said Perot more than a speechwriter, a manager, a substantive person." Kean acknowledged while few individuals came into the White House in an election year and perform as he will. He is that.

Since he took over as House chief of staff six months after the resignation of Sununu, Skinner has been communications as Bush's major

He said in interviews assumed the job it would be a problem he would fix, and that then-communication David Demarest was likely replaced.

Skinner told the staff that Demarest will move out of director of public liaison, a position that coordinates House outreach to interest

He thus replaces Sherr who left when her husband J. Rollins, became co-chairman of Ross Perot's presidential

The communications first offered to James La experienced campaign communications expert, who turned order to retain his Washington business, and Skinner announced that White House secretary Marlin Fitzwater assume new communications.

Skinner continued his improve the communication and others with experienced campaign communications speechwriting were men the post. None proved to take it.

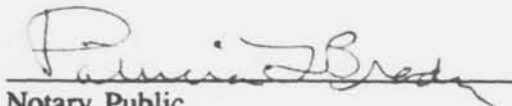
Among those Skinner mentioned to associates were Grady, No. 2 official at the

**AFFIDAVIT OF LESLIE J. KERMAN**

1. My address is 1112 Waverly Way, McLean, Virginia 22101.
2. I telephoned the Presidential Victory Committee at 202/546-1992 on July 31, 1992 at approximately 9:40 a.m., and spoke to an individual who identified himself as "Marty". Marty answered the telephone "Presidential Victory Committee".
3. After a general discussion regarding the Presidential Victory Committee, I asked Marty whether he had any information on the Republican Challengers' Committee. Marty responded that the Republican Challengers' Committee was "affiliated" with the Presidential Victory Committee.
4. I then asked Marty whether one could contribute to the Presidential Victory Committee and the Republican Challengers' Committee by a single check, and he responded that one could contribute to both committees using the same check.
5. I further asked Marty whether there were any limits on the amount of money an individual could contribute to the two committees, and he replied that there were no limits.

  
Leslie J. Kerman

Sworn to and subscribed before me this  
31 day of July, 1992

  
Notary Public

My commission expires:

2/29/94

# Presidential Victory Committee

Check if different than previously reported

38 Ivy Street, S.E., Suite A  
CITY, STATE and ZIP CODE

Washington, D. C. 20003

C00260299

The committee qualifies as a noncandidate committee DURING THIS Reporting Period on

## 4. TYPE OF REPORT

(a) April 15 Quarterly Report

Monthly Report Due On

July 15 Quarterly Report

February 20

June 20

October 20

October 15 Quarterly Report

X March 20

July 20

November 20

January 31 Year End Report

April 20

August 20

December 20

July 31 Mid Year Report (non-election Year Only)

May 20

September 20

January 31

Termination Report

Twelfth day report preceding

(Type of Election)

election on

In the State of

Thirtieth day report following the General Election on

In the State of

(b) Is this Report an Amendment?

YES

X NO

## SUMMARY

COLUMN A  
This Period

COLUMN B  
Calendar Period Date

5. Covering Period 2/1/92 through 2/29/92

6. (a) Cash on Hand January 1, 1992

(b) Cash on Hand at Beginning of Reporting Period

(c) Total Receipts (from Line 18)

(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B)

7. Total Disbursements (from Line 20)

8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d))

9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)

10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete

Type or Print Name of Treasurer

Robert E. Miller, Jr.

Signature of Treasurer

Date

3/18/92

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g

FEC FORM 3X

(revised 1/1/91)



**NAME OF COMMITTEE OR CANDIDATE**  
**Presidential Victory Committee**  
**ADDRESS (number and street)**  
**38 Ivy Street, S.E., Suite A**  
**CITY, STATE and ZIP CODE**  
**Washington, D. C. 20003**

**REC IDENTIFICATION NUMBER**  
**C00260299**  
 This committee is subject to a periodic continuing disclosure filing requirement.

**1. TYPE OF REPORT**

☐ 1. Quarterly Report  
☐ 2. Semi-Annual Report  
☐ 3. Annual Report  
☐ 4. Special Report  
☐ 5. Termination Report  
☐ 6. Report on Amendment

☐ 7. Monthly Report Due On: February 20/15/1 June 20/15/1 October 20/15/1  
☐ 8. March 20/15/1 July 20/15/1 November 20/15/1  
☐ 9. April 20/15/1 August 20/15/1 December 20/15/1  
☐ 10. May 20/15/1 September 20/15/1 January 20/15/1

☐ 11. January 31 Year End Report  
☐ 12. July 31 Year End Report  
☐ 13. January 31 Year End Report (non-election Year Only)  
☐ 14. Termination Report  
☐ 15. Report on Amendment

**SUMMARY**

**2. Covering Period** 2/1/92 through 2/29/92  
**3. Cash on Hand January 1, 1992** \$ 27,304.00  
**4. Cash on Hand at Beginning of Reporting Period** \$ 27,304.00  
**5. Total Receipts (from Line 19)** \$ 510.55  
**6. Subtotal (add Lines 3(a) and 5(c) for Column A and Lines 3(a) and 5(c) for Column B)** \$ 27,814.55  
**7. Total Disbursements (from Line 20)** \$ 26,793.45  
**8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(c))** \$ 1,021.10  
**9. Debts and Obligations Owed TO the Committee (itemize on Schedule C and or Schedule D)** \$ -0-  
**10. Debts and Obligations Owed BY the Committee (itemize on Schedule C and or Schedule D)** \$ -0-

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

**Type or Print Name of Treasurer**  
**Robert E. Miller, Jr.**  
**Signature of Treasurer** *[Signature]*

Date 5/8/92

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. § 437g.

**FEC FORM 28X**  
 ( revised 10/89 )

# Presidential Victory Committee

ADDRESS (number and street) Check if different than previously reported

38 Ivy Street, S. E., Suite A

CITY, STATE and ZIP CODE

Washington, D. C. 20003

MAILED  
MAY 23 11 59 AM '92

2. FEC IDENTIFICATION NUMBER

C00260299

This committee qualified as a non-candidate committee DURING THIS Reporting Period on (date)

## 4. TYPE OF REPORT

(a) April 15 Quarterly Report

(b) July 15 Quarterly Report

(c) October 15 Quarterly Report

(d) January 31 Year End Report

(e) July 31 Mid Year Report (Non-election Year Only)

(f) Termination Report

Monthly Report Due On

February 20

June 20

October 20

March 20

July 20

November 20

April 20

August 20

December 20

May 20

September 20

January 21

Twelfth day report preceding

election on

in the State of

Thirtieth day report following the General Election

in the State of

(g) Is this Report an Amendment?

YES

NO

## SUMMARY

Covering Period 3/1/92 through 3/31/92

(a) Cash on Hand January 1, 1992

(b) Cash on Hand at Beginning of Reporting Period

(c) Total Receipts (from Line 19)

(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B)

7. Total Disbursements (from Line 30)

8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d))

9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)

10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Robert E. Miller, Jr.

Signature of Treasurer

Date

4/20/92

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. 6437g.



# REPORT OF RECEIPTS AND DISBURSEMENTS

GENERAL ELECTION  
COMMISSION

For One Year or an Applicable Committee  
or Other Summary Period

MAY 12 1992

NAME OF COMMITTEE (in full)  
**Presidential Victory Committee** #C00260299

ADDRESS (Number and Street)  
**1111 1/2 Street, S. E., Suite A**

CITY/STATE/ZIP  
**Washington, D.C. 20003**

4. TYPE OF REPORT  
☒ Initial Report  
☐ Quarterly Report  
☐ Year-End Report  
☐ Other (Specify) \_\_\_\_\_

5. REPORTING PERIOD  
 From **1/1/92** to **12/31/92**

6. COMMITTEE BALANCE SHEET  
 This committee started at a multicandidate committee DURING THIS REPORTING PERIOD  
 YES ☐ NO ☒

7. SUMMARY  
 Reporting Period: **1/1/92** through **12/31/92**

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
1. Total Receipts (from Line 19, add Line 20)	\$ 224,322.16	\$ 251,626.16
2. Total Disbursements (from Line 30, add Line 31)	\$ 234,697.19	\$ 235,707.34
3. Net Change (add Lines 1 and 2)	\$ -10,375.03	\$ -8,081.18
4. Total Assets (add Lines 1 and 2)	\$ 213,947.13	\$ 243,544.98
5. Total Liabilities (add Lines 1 and 2)	\$ 224,322.16	\$ 251,626.16
6. Total Net Worth (add Lines 1 and 2)	\$ -10,375.03	\$ -8,081.18

8. DEBTS AND OBLIGATIONS OWED TO THE COMMITTEE  
 (Itemize on Schedule C and/or Schedule D)

9. DEBTS AND OBLIGATIONS OWED BY THE COMMITTEE  
 (Itemize on Schedule C and/or Schedule D)

10. CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT, AND COMPLETE.

11. TYPE OR PRINT NAME OF TREASURER  
**Robert E. Miller**

12. SIGNATURE OF TREASURER  
*Robert E. Miller*

NOTE: Summary of this report is to be included in the summary of the report to the General Election Commission of 2 USC 437b.

FEC FORM 3X  
(revised 1/89)

FEDERAL ELECTION COMMISSION

Jan 24 10 50 AM '92

**Political Victory Committee**  
 20 Ivy Street, SE, Suite A  
 WASH DC 20003

**C00260299**  
 This committee qualified as a subordinate committee during this reporting period on 03/91

**4. TYPE OF REPORT**

- ☐ April 15 Quarterly Report
- ☐ July 15 Quarterly Report
- ☐ October 15 Quarterly Report
- ☐ January 31 Year End Report
- ☐ July 31 Mid Year Report for election year only
- ☐ Termination Report

Monthly Report Due On:  
 February 20, May 20, August 20, November 20, January 31, April 15, July 15, October 15, December 31

☐ Is this Report an Amendment? Yes No

**SUMMARY**

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
1. Reporting Period <u>5/1/92</u> through <u>5/31/92</u>		
2. (a) Cash on hand January 1, 1992		\$ -0-
(b) Cash on hand at beginning of Reporting Period	\$ 6,418.52	
(c) Total Receipts from Line 10	\$ 214,267.85	\$ 679,752.34
(d) Subtotal: add Lines 2(b) and 10(c) for Column A and 2(b) and 10(c) for Column B	\$ 220,686.37	\$ 679,752.34
7. Total Disbursements from Line 20	\$ 212,077.59	\$ 671,143.56
8. Cash on hand at close of Reporting Period: subtract Line 7 from Line 6(d)	\$ 8,608.78	\$ 8,608.78
9. Debts and Obligations Owed by the Committee: netted off on Schedule C and/or Schedule D	\$ -0-	
10. Debts and Obligations Owed by the Committee: netted off on Schedule C and/or Schedule D	\$ 12,880.00	

*Robert M. Miller, Jr.*  
 Signature of Treasurer

Date  
 6/20/92

NOTE: Submission of this report is subject to the provisions of 2 USC 4316

FEC FORM 280  
 (Revised 5/89)

# REPORT OF CONTRIBUTIONS AND DISBURSEMENTS

RECEIVED  
GENERAL ELECTION  
COMMISSION  
MAIL ROOM

For Use Only by an Authorized Committee  
(Summary Page)

Jul 24 1:25 PM '92

1. NAME OF COMMITTEE (in full)  
**Presidential Victory Committee**  
ADDRESS (number and street)  
**38 Ivy Street, S.E., Suite A**  
CITY, STATE AND ZIP CODE  
**Washington, D. C. 20003**

2. FEC IDENTIFICATION NUMBER  
**C00260299**  
3. This committee qualified as a multicandidate committee DURING THIS Reporting Period on (date)

## 4. TYPE OF REPORT

- (a) April 15 Quarterly Report  
July 15 Quarterly Report  
October 15 Quarterly Report  
January 31 Year End Report  
July 31 Mid Year Report (Non-election Year Only)  
Termination Report  
(b) Is this Report an Amendment? YES ☒ NO

Monthly Report Due On  
☐ February 20 ☐ June 20 ☐ October 20  
☐ March 20 ☒ July 20 ☐ November 20  
☐ April 20 ☐ August 20 ☐ December 20  
☐ May 20 ☐ September 20 ☐ January 20  
☐ Twelfth day report preceding election on \_\_\_\_\_ in the State of \_\_\_\_\_  
☐ Thirtieth day report following the General Election in the State of \_\_\_\_\_

SUMMARY		COLUMN A This Period	COLUMN B Calendar Year-to-Date
5. Covering Period	6/1/92 through 6/30/92		
6. (a) Cash on Hand January 1, 1992			\$ -0-
(b) Cash on Hand at Beginning of Reporting Period		\$ 8,608.78	
(c) Total Receipts (from Line 18)		\$ 157,576.73	\$ 837,329.07
(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B)		\$ 166,185.51	\$ 837,329.07
7. Total Disbursements (from Line 30)		\$ 138,775.18	\$ 809,918.74
8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d))		\$ 27,410.33	\$ 27,410.33
9. Debts and Obligations Owed TO the Committee (Remainder of on Schedule C and/or Schedule D)		\$ -0-	
10. Debts and Obligations Owed BY the Committee (Remainder of on Schedule C and/or Schedule D)		\$ 18,048.18	

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete

Type or Print Name of Treasurer  
**Robert E. Miller, Jr.**  
Signature of Treasurer  
*[Signature]*  
Date  
**7/20/92**

NOTE: Submission of false information or misleading information may subject the person signing this Report to the penalties of 2 U.S.C. § 4370g





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 14, 1992

Eric D. London, Esquire  
Democratic National Committee  
420 South Capitol Street, SE  
Washington, DC 20003

RE: MUR 3578

Dear Mr. London:

This letter acknowledges receipt on August 12, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Presidential Victory Committee, and Robert E. Miller, as treasurer, the Republican Challengers' Committee, and Robert E. Miller, Jr., as treasurer, and Wesley West. 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 3578. 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,

George F. Rishel  
Assistant General Counsel

Enclosure  
Procedures

960437083



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 14, 1992

Robert E. Miller, Treasurer  
Presidential Victory Committee  
38 Ivy Street, SE  
Washington, DC 20003

RE: MUR 3578

Dear Mr. Miller:

The Federal Election Commission received a complaint which indicates that the Presidential Victory 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 3578. 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.

9604370844

Robert E. Miller, Treasurer  
Presidential Victory Committee  
Page 2

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



George F. Rishel  
Assistant General Counsel

Enclosures

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

96043770845



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 14, 1992

Robert E. Miller, Jr., Treasurer  
Republican Challengers' Committee  
450 "A" Street, 2nd Floor  
San Diego, CA 92101

RE: MUR 3578

Dear Mr. Miller:

The Federal Election Commission received a complaint which indicates that the Republican Challengers' 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 3578. 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.

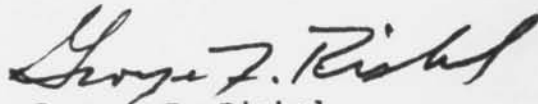
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

9604370816

Robert E. Miller, Treasurer  
Republican Challenger's Committee  
Page 2

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



George F. Rishel  
Assistant General Counsel

Enclosures

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

96043770847



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 14, 1992

Wesley West  
3240 Chevy Chase Drive  
Houston, Texas 77019

RE: MUR 3578

Dear Mr. West:

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 3578. 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.

96043770818



Wesley West  
Page 2

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



George F. Rishel  
Assistant General Counsel

Enclosures

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

96043770819

03C 6244

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

VINSON & ELKINS  
L.L.P.  
ATTORNEYS AT LAW

92 AUG 28 PM 4:06

2500 FIRST CITY TOWER  
1001 FANNIN  
HOUSTON, TEXAS 77002-6760  
TELEPHONE (713) 758-2222  
FAX (713) 758-2346

HUNGARIAN EXPORT BUILDING  
UL. VOROVSKOGO, 21  
121069 MOSCOW, RUSSIAN FEDERATION  
TELEPHONE 011 (70-95) 202-8416  
FAX 011 (70-95) 200-4216

47 CHARLES ST., BERKELEY SQUARE  
LONDON W1X 7PB, ENGLAND  
TELEPHONE 011 (44-70) 491-7236  
FAX 011 (44-70) 499-5320

THE WILLARD OFFICE BUILDING  
1455 PENNSYLVANIA AVE., N.W.

WASHINGTON, D. C. 20004-1008

TELEPHONE (202) 639-6500  
FAX (202) 639-6604

WRITER'S DIRECT DIAL  
(202) 639-6578

August 28, 1992

3700 TRAMMELL CROW CENTER  
816 CONGRESS AVENUE  
AUSTIN, TEXAS 78701-2496  
TELEPHONE (817) 495-8400  
FAX (817) 495-8612

3700 TRAMMELL CROW CENTER  
2001 ROSS AVENUE  
DALLAS, TEXAS 75201-2916  
TELEPHONE (214) 220-7700  
FAX (214) 220-7716

SAGATELA 12  
00-585 WARSAW, POLAND  
TELEPHONE 011 (48-2) 625-33-33  
FAX 011 (48-2) 625-22-45

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

Dear Mr. Long:

3578

Enclosed is Mrs. Wesley West's Statement of Designation of Counsel for purposes of MUR(3758). Mrs. West acknowledges receipt of the notice of the complaint and will file a response on or before Monday, September 14, 1992.

If you have any questions regarding this matter, please contact me at (202) 639-6578.

Respectfully submitted,

*Russell W. Sullivan*

Russell W. Sullivan

Enclosure

cc: Mrs. Wesley West

03C 6244



STATEMENT OF DESIGNATION OF COUNSEL

MUR 3758

NAME OF COUNSEL: Russell W. Sullivan, Esq.

ADDRESS: Vinson & Elkins, L.L.P.

1455 Pennsylvania Ave., N.W.

Washington, D.C. 20004-1008

TELEPHONE: (202) 639-6578

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.

8-27-92  
Date

Mrs. Wesley West  
Signature

RESPONDENT'S NAME: Mrs. Wesley West

ADDRESS: 3240 Chevy Chase Drive

Houston, TX 77019

HOME PHONE:

BUSINESS PHONE: N/A

96043770851



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
F.E.C.  
SECRETARIAT

92 AUG 20 PM 4:53

**SENSITIVE**

August 20, 1992

**MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner *LOL*  
Associate General Counsel *JB*

SUBJECT: MUR 3578 - Injunctive Relief

**BACKGROUND**

On August 12, 1992, the Democratic National Committee ("DNC") filed a complaint against the Presidential Victory Committee and Robert E. Miller, as treasurer ("PVC"); Republican Challengers' Committee and Robert E. Miller, as treasurer ("RCC"); and Wesley West in which the DNC alleged several violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). Attachment 1. The DNC asked that the Respondents be immediately enjoined from further violations of the Act. The DNC also asked that the Commission immediately notify individuals who had contributed to both PVC and RCC of the alleged affiliation of the two committees and that they may have been "lured" into making excessive contributions.

According to the FEC database, PVC had reported total receipts of approximately \$837,327 and total disbursements of \$809,917 with cash on hand of \$27,410 and debts owed by the committee of \$18,048 through June 30, 1992. RCC had reported total receipts of approximately \$112,343 and total disbursements of \$124,506 with \$93 in cash on hand and debts owed by the committee of \$108,103 through June 30, 1992. RCC's reported financial activity since February 1992 has been negligible. See Attachment 2.

**LEGAL AND FACTUAL ANALYSIS**

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). In addition, the Presidential Election Campaign Fund Act provides

that the Commission is authorized to seek any declaratory or injunctive relief "concerning any civil matter covered by the provisions of this subtitle or section 6096." 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 not 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.

#### DISCUSSION

The complainant makes these basic allegations:

- (1) PVC accepted \$9,000 in contributions in excess of the limits and Wesley West made an excessive contribution to PVC;
- (2) PVC failed to report its affiliation with RCC;<sup>1</sup>
- (3) PVC failed to disclose contributions or debts or accepted illegal contributions from its vendors;
- (4) PVC submitted reports that appear to be signed by someone other than the treasurer or assistant treasurer.

A preliminary review indicates that whether a substantial violation of the Act has occurred will require a response from all of the respondents and further analysis. An investigation to ascertain the key facts may also be necessary. Thus, based on the

---

1. The DNC bases its allegations of affiliation on these factors: (1) both PVC and RCC have the same treasurer; (2) Floyd Brown is chairman of both PVC and RCC; (3) an individual told a caller she could contribute to both committees in a single check and until recently both committees shared the same depository; (4) both committees use the same vendors with approximately 80 percent of PVC's total disbursements going to the same vendors paid by RCC while some of these vendors have the same addresses.

96043770852

information as it presently appears to be, it is difficult to say that the first requirement for injunctive relief is met. We also do not believe the other three criteria for seeking injunctive relief are met here. We do not believe the failure to seek such relief will result in irreparable harm to the complainant or other parties. Conversely, we do conclude that to seek injunctive relief would seriously harm or prejudice the interests of the Respondents and would not serve the public interest.

Finally, with regard to the request for an expeditious notice to contributors who have made contributions to both committees, we note that such notice would be premature and inappropriate prior to a determination that the two committees are affiliated. Thus, we recommend 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. This Office is, however, prepared to move forward with its report without undue delay as it is attempting to do with all complaint generated matters.

#### RECOMMENDATIONS

1. Decline at this time to seek injunctive relief.
2. Approve the appropriate letters.

#### Attachments

1. Complaint
2. Database Printouts for PVC and RCC

Staff assigned: George F. Rishel  
Jeffrey D. Long

96043770854

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Presidential Victory Committee ) MUR 3578  
and Robert E. Miller, as )  
treasurer ("PVC"); )  
Republican Challengers' )  
Committee and Robert E. Miller, )  
as treasurer ("RCC"); )  
Wesley West. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 26, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3578:

1. Decline at this time to seek injunctive relief.
2. Approve the appropriate letters, as recommended in the General Counsel's Memorandum dated August 20, 1992.

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

Attest:

8-26-92  
Date

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

Received in the Secretariat: Thurs., August 20, 1992 4:53 p.m.  
Circulated to the Commission: Fri., August 21, 1992 12:00 p.m.  
Deadline for vote: Wed., August 26, 1992 4:00 p.m.

dr

96043770855





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 2, 1992

Carol C. Darr, General Counsel  
Democratic National Committee  
430 S. Capitol Street, S.E.  
Washington, D.C. 20003

RE: MUR 3578

Dear Ms. Darr:

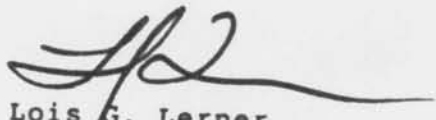
On August 12, 1992, the Federal Election Commission received your letter alleging that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer ("PVC"), and the Republican Challengers' Committee and Robert E. Miller, Jr., as treasurer ("RCC"), violated the Federal Election Campaign Act of 1971, as amended.

Your letter seeks injunctive relief to prevent PVC and RCC 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 when the entire file is closed in this matter.

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

Sincerely,

Lawrence M. Noble  
General Counsel

  
BY: Lois G. Lerner  
Associate General Counsel

9604379856



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 2, 1992

Robert E. Miller, Jr., Treasurer  
Presidential Victory Committee  
38 Ivy Street, S.E.  
Washington, D.C. 20003

RE: MUR 3578  
Presidential Victory Committee  
and Robert E. Miller, Jr., as  
treasurer

Dear Mr. Miller:

On August 14, 1992, the Federal Election Commission notified the Presidential Victory Committee and you, as treasurer, ("Committee") of a complaint alleging that the Committee violated certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to the Committee at that time.

The complainant seeks injunctive relief to prevent the Committee 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 Jeffrey D. Long, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble  
General Counsel

A handwritten signature in dark ink, appearing to be "L. Lerner", is written over a horizontal line.

BY: Lois G. Lerner  
Associate General Counsel

9604370857



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 2, 1992

Robert E. Miller, Jr., Treasurer  
Republican Challengers' Committee  
450 "A" Street, 2nd Floor  
San Diego, California 92101

RE: MUR 3578  
Republican Challengers'  
Committee and Robert  
E. Miller, Jr., as treasurer

Dear Mr. Miller:

On August 14, 1992, the Federal Election Commission notified the Republican Challengers' Committee and you, as treasurer, ("Committee") of a complaint alleging that the Committee violated certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to the Committee at that time.

The complainant seeks injunctive relief to prevent the Committee 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 Jeffrey D. Long, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

9604370858



**STATEMENT OF DESIGNATION OF COUNSEL**

**MUR** 3578

**NAME OF COUNSEL:** William J. Olson & John S. Miles

**ADDRESS:** William J. Olson, P.C.  
8180 Greensboro Drive, Suite 1070  
McLean, Virginia 22102-3823

**TELEPHONE:** \_\_\_\_\_

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE  
92 SEP -2 PM 3:22

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.

8/24/92  
Date

Robert E. Miller, Jr.  
Signature

**RESPONDENT'S NAME:** Presidential Victory Committee  
Robert E. Miller, Jr., Treasurer

**ADDRESS:** 38 Ivy Street, S.E., Suite A  
Washington, D.C. 20003

**HOME PHONE:** \_\_\_\_\_

**BUSINESS PHONE:** (202)546-1992

9604370859

06C6309 Long

WILLIAM J. OLSON, P.C.  
ATTORNEYS AT LAW  
8180 GREENSBORO DRIVE, SUITE 1070  
MCLEAN, VIRGINIA 22102-3823  
TELEPHONE (703) 356-5070  
FAX (703) 356-5085

1815 H STREET, N.W.  
SUITE 600  
WASHINGTON, D.C. 20006-3604  
TELEPHONE (202) 223-9086  
FAX (202) 331-8988

WILLIAM J. OLSON  
(D.C. VA.)  
JOHN S. MILES  
(D.C. MD. OF COUNSEL)  
GILMAN & PANGIA  
(OF COUNSEL)

September 2, 1992  
HAND DELIVER

92 SEP -2 PM 3:15

FEDERAL ELECTION COMMISSION

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

Attention: George F. Rishel, Esquire  
Assistant General Counsel

Re: Presidential Victory Committee,  
Robert E. Miller, Jr.,  
Treasurer, et al.; MUR 3578

Dear Sirs:

This firm represents Presidential Victory Committee ("PVC") and Robert E. Miller, Jr., as Treasurer of PVC (collectively referred to herein as "PVC Respondents"), in the above-referenced matter. By letters dated August 14, 1992, which we are advised were received by the PVC Respondents on or about August 18, 1992, you indicated that the Federal Election Commission ("FEC") had received a complaint indicating that the PVC Respondents may have violated the Federal Election Campaign Act of 1971 ("FECA"), and you invited their response within 15 days of receipt of your letters. Enclosed is the Statement of Designation of Counsel, signed by Robert E. Miller, Jr., as Treasurer for the Presidential Victory Committee,, designating the undersigned as counsel in this matter, in accordance with your instructions.

We expect, in accordance with the law and your letter of August 14, 1992, that this matter will remain confidential, and we expressly request that it remain confidential.

This matter was instituted following the submission of a letter (dated August 11, 1992) and complaint by representatives of the Democratic National Committee ("DNC") on or about August 12, 1992. The complaint accuses PVC of several violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), and alleges that "the organizations which Floyd Brown directs for

06C6309

the purpose of furthering George Bush's re-election efforts have engaged in a series of ongoing activities in violation of federal election campaign laws." The DNC requests that the Federal Election Commission ("FEC") enjoin the respondents' alleged unlawful activities.

The complaint, in large part, is a series of speculative, unfounded assertions that were filed against PVC as part of a political maneuver to stop PVC from conducting lawfully its independent expenditure effort in favor of the re-election of President Bush. The DNC has obviously combed the FEC filings of PVC and others in an attempt to find any possible oversight by PVC, in its effort to comply with all relevant provisions of law. But PVC, to the best of our knowledge, has endeavored to comply to the letter with all provisions of the Act and the Regulations in every instance, and its only failings of which it is aware -- and fully disclosed by PVC itself -- have been corrected.

This is not to say that everyone, including the DNC, does not have the right to allege that violations may have been committed, even without certain knowledge that they have been. But where, as here, a major political committee files a complaint alleging violations that are for the most part highly doubtful, the qualification that such allegations are made "upon information and belief" should be carefully scrutinized.<sup>1</sup> In this case, at least some of the allegations made by the DNC, based upon the information available to the DNC, would tend to strain the credulity of reasonable people.

With respect to the specific, numbered allegations of the complaint, PVC's response is as follows:

1. The DNC alleges that PVC accepted an excessive contribution. The fact of the receipt of an excessive contribution by PVC was fully disclosed by PVC and was corrected by refund prior to becoming aware of the institution of this matter under review.

Attached hereto as Exhibit A is a copy of PVC's check to Mrs. Wesley West, refunding to her the sum of \$10,000, from total contributions of \$14,000, for a net contribution of \$4,000 to PVC by Mrs. West. Mrs. West apparently was unaware of the Act's limitations on contributions. PVC was not unaware of those limitations, and the administrative refund should have been made at an even earlier date, but the refund was made, it was made before PVC knew about the filing of any complaint or action by

---

<sup>1</sup> Such scrutiny is especially required where, as here, we are advised that a copy of the complaint was provided to the Washington Post in an apparent attempt to generate a negative story about PVC, for political purposes.

the FEC, and the relevant facts were at all times reported by PVC. This is a situation where a mistake was made, but it was corrected voluntarily, and, we would submit, it is not a situation that warrants the imposition of sanctions as suggested by the DNC.

2. The DNC's second allegation is that PVC is affiliated with Republican Challengers' Committee ("RCC"), and that PVC failed to report the alleged affiliation.

No affiliation was reported because the two committees are not affiliated. And, we submit, despite the grounds for the affiliation charge as alleged by the DNC, FEC records demonstrate that RCC has been totally dormant and inoperative in the 1992 election cycle and has acted only to report and retire its debt, which was incurred in connection with previous elections. That should have been obvious to the DNC, which alleges that it reviewed the FEC reports filed by RCC, but the DNC does not present that fact to the Commission.

In support of the affiliation charges, the DNC points to the fact that RCC and PVC both have the same individual (Floyd Brown) as Chairman and employ the same individual (Robert E. Miller, Jr.) as Treasurer. Mr. Miller is an accountant who serves as Treasurer of several political committees that are not affiliates, and Mr. Brown is, and has been, involved in different organizations that are not affiliated. These facts, by themselves, demonstrate no affiliation between RCC and PVC.

Despite the identity of certain personnel in both PVC and RCC as alleged by the DNC, the two committees obviously were formed for different purposes during different time periods, and they should not be considered as "affiliated" within the intentment of the Regulations. Indeed, we submit that there are no reasonable grounds for any finding of affiliation. As the DNC undoubtedly realizes, RCC is de facto non-operational, except for its debt-retirement program.

As further support for its charges, the DNC has attempted to show, by affidavit, that PVC and RCC are in effect acting as one committee. That allegation is false. The DNC's remarks about "shared operations" (complaint, p. 3) are somewhat unusual and perhaps disingenuous. During the time period in question, RCC, technically headquartered at its Treasurer's offices in San Diego, California, had no operations to share with PVC or anyone else. The affidavit of the DNC's "individual" (Leslie Kerman), who allegedly telephoned the PVC offices, relates facts that border on the ridiculous. If the story contained in the affidavit is true, the person who answered the telephone for PVC spoke in error, and presumably spoke out of ignorance or a



misunderstanding of the questions that were allegedly posed.<sup>2</sup> Indeed, the supposed affiliation between PVC and RCC as alleged in the Kerman affidavit, as well as the notion that the ability to contribute to either or both committees is unlimited, seems quite far-fetched. Why would Ms. Kerman have even mentioned RCC in a telephone conversation to PVC? What possible motive would "Marty" have in relaying false information about PVC or about the restrictions on contributions? We do not know the circumstances of the Kerman affidavit, we have no idea who Leslie Kerman is, and we have no knowledge with respect to the truth or falsity of the matters contained therein. But we submit that the affidavit contains no competent evidence of affiliation between PVC and RCC.

Finally, as evidence of affiliation between PVC and RCC, the DNC alleges "extensive use of common vendors" by both committees.<sup>3</sup> Even if this were a relevant factor, however, the DNC does not, and cannot, allege that the two committees used the vendors in question at the same time resulting in coordinated activities. In fact, as already set forth above, RCC has not functioned as a political committee during the 1992 election cycle and has only been involved in debt retirement activities. See Affidavit of Floyd G. Brown, attached hereto as Exhibit B. There is no use of common vendors by the committees in question, therefore, in any manner that would support the DNC's charges of affiliation.

We submit that an examination of criteria set forth at 11 CFR section 110.5(g)(4)(ii), which the FEC would normally consider in determining whether affiliation between two organizations exists,

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<sup>2</sup> Marty Hefner (the only Marty who possibly would have answered PVC's phones) was a summer intern working for PVC during the time in question. Mr. Hefner, who was new to PVC at the time of the alleged conversation, and who barely knew about the existence of RCC at the time, has been interviewed. He has no present knowledge of the facts set forth in the Leslie Kerman affidavit, and he cannot recall any such conversation. If any such conversation took place between Ms. Kerman and Mr. Hefner, Mr. Hefner would state that any such remarks attributed to him about PVC's alleged affiliation are false and, if he made any statements even resembling the statements set forth in the Kerman affidavit, they would have been made out of ignorance and/or a misunderstanding. At no time was Mr. Hefner instructed or authorized by anyone at PVC to make any of the remarks attributed to "Marty" in the Kerman affidavit, as alleged in the complaint.

<sup>3</sup> Although the DNC complaint purports to name a long list of common vendors, in effect there was only one -- Response Dynamics, Inc. (RDI). The other companies listed by the DNC are RDI affiliates, except for WIB, which acts as an escrow agent for RDI clients.

fails to produce a single factor supporting the DNC's charge of affiliation between PVC and a dormant committee. The fact of the matter is that there is no affiliation, formal or otherwise, between RCC and PVC, and the DNC's charges are false.<sup>4</sup>

3. The DNC's third charge is that, "upon information and belief," PVC failed to disclose certain contributions or that PVC accepted contributions from illegal sources. (See complaint, p. 4). The purported ground for this allegation is the receipt of \$27,304, as reported in PVC's March 20, 1992 FEC Report, and the reporting of only \$510.55 in disbursements for the same period. The DNC admits that vendors were subsequently paid in connection with those fundraising efforts, but it speculates, both recklessly and erroneously, that the "late payment" of such vendors is so extraordinary that either it is outside the ordinary course of business or the vendors' services were secured by personal guarantees, and, therefore, that such arrangements constitute illegal contributions.

The DNC's action, in raising such speculative assertions in the form of a complaint against PVC, may be subject to serious question, but PVC has done nothing wrong. In fact, the funds in question were not raised in a direct mail campaign, as assumed by the DNC. They were raised in a telemarketing campaign that, unlike some direct mail campaigns, involved minimum up-front expense. The idea that PVC was given an illegal extension of credit by its vendors, or that the vendors received unreported personal guarantees, is unsupported. Telemarketing bills were paid beginning on March 4, 1992, and they were reported properly, beginning with the report for the very next month -- March 1992.<sup>5</sup> See Affidavit of Floyd G. Brown, attached hereto as Exhibit B.

4. Finally, the DNC asserts that PVC violated the law insofar as some of the reports "do not contain" the signature of PVC's Treasurer or assistant Treasurer. (See complaint, p. 5.)

It is our understanding that all PVC reports contain the Treasurer's signature, although there are instances where the Treasurer's own signature was not set forth on the front sheet of

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<sup>4</sup> Assuming arguendo, the Commission were to find these two committees affiliated, the only error would have been a failure to note the affiliation on FEC Form 1. There is not even an allegation that any contribution or expenditure limitation, or any other financial rule imposed under federal election law, would have been violated.

<sup>5</sup> If PVC had been filing on a quarterly basis, rather than a monthly basis as it did, both the income from this telemarketing effort and the expenses associated with that effort would have been listed on the very same report.



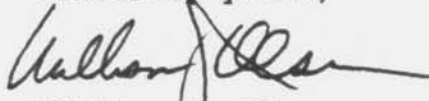
the report. In fact, the front sheets of several of PVC's FEC reports were signed by Chris Miller, the son of PVC's Treasurer, Robert E. Miller, Jr., and a partner (with Robert E. Miller, Jr.) in the firm of Miller/Reos and Company, the accounting firm which handles these reporting matters for PVC. This practice was based upon informal advice received by Mr. Miller from an FEC employee, and the practice was employed when Robert E. Miller, Jr. was not available physically to sign certain of the reports. Apparently, it was believed that the Treasurer could delegate a person in his firm to sign the front sheet of the report for him. It should be noted, however, that the Treasurer did sign the "independent expenditure" certifications in each report.

Upon review of the law and after consultation with counsel, however, PVC recently filed amended reports in each instance where the PVC Treasurer had not personally signed the front sheet of the report, and PVC intends that the practice of allowing someone other than the Treasurer (or Assistant Treasurer) to sign the front sheets of the reports will not be repeated.

#### CONCLUSION

We submit that PVC has endeavored to comply faithfully with federal election law in the conduct of its activities. Most of the allegations contained in the DNC's complaint are without a legitimate basis in fact and law as explained above. In the case of any errors PVC has made, of which it is aware, the errors have been corrected. There is no basis for assuming that there will by any repetition of errors, and there is every reason for believing that PVC will adhere faithfully to all of the requirements set forth in the Act and the Regulations. We respectfully request, therefore, that the complaint be dismissed.

Sincerely yours,



William J. Olson

Enclosures

cc: Presidential Victory Committee  
Robert E. Miller, Jr., Treasurer

WJO:kjh

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THE GEORGE  
MASON BANK  
FEDERAL RESERVE BANK

PRESIDENTIAL VICTORY COMMITTEE INC. 1-82

1127

AUGUST 5 1992

10-44/700

PAY TEN THOUSAND AND 00/100  
TO THE ORDER  
OF

DOLLARS \$ 10,000.00

REFUND

MRS. WESLEY WEST  
3240 CHEVY CHASE DR  
HOUSTON, TX 77019-3210

*Linda P. [Signature]*

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AFFIDAVIT

1. My name is Floyd Brown, and I am Chairman of Presidential Victory Committee ("PVC"), a political committee duly registered with the Federal Election Commission. PVC is involved in an independent expenditure effort in support of the 1992 re-election effort of President Bush.

2. I have reviewed the allegations of the Democratic National Committee in a complaint transmitted with a letter dated August 11, 1992 to the Federal Election Commission. The complaint, among other things, accuses PVC of being affiliated with another political committee and of failing to report contributions.

3. The complaint alleges that Republican Challengers Committee (RCC) and PVC are affiliated committees because of my role with both organizations and because they both use common vendors. In fact, however, RCC (of which I am Chairman) is no longer operational as a political committee, it has not been operational with respect to the 1992 election cycle, and it has not been operational for many months (beginning well before the formation of PVC) except with respect to efforts to retire the debt it has accrued. Those efforts are documented in the FEC reports filed by RCC. In my opinion, there is no affiliation between PVC and RCC. They are completely different committees formed in different time periods for different purposes, and RCC has not been operational in the 1992 election cycle.

4. The complaint of the DNC also accuses PVC of failing to report certain contributions that the DNC assumes PVC received, either in the form of illegal credit extensions from vendors or in the form of personal guarantees. That allegation is false. I have reviewed the DNC's speculation that the receipts PVC reported in its initial (March 20, 1992) FEC report are an indication of unreported contributions (because the absence of a list of significant disbursements or debts in the same report allegedly indicates extraordinary terms from vendors or personal guarantees). That false allegation is premised upon a false assumption of the DNC.

5. The reason for the absence of significant expenditures in the March 20, 1992 FEC report of PVC is not difficult to understand: the receipt by PVC of over \$27,000, as reported to the FEC, was due to a telemarketing fundraising project, for which a highly select group of donors was targeted, in February, 1992. The expenses relative to this project were paid to the vendors involved, beginning on March 4, 1992, which was after receipt of the initial funds during February. This was done in the ordinary course of PVC's business, and there were no special credit extension terms, as the DNC suggests, nor were there personal guarantees.

6. The DNC's incorrect assertion that PVC's initial (March 20, 1992) FEC report indicates extraordinary vendor terms or personal guarantees is grounded in the DNC's stated assumption that the funds were the result of a substantial direct mail

fundraising campaign (for which substantial up-front costs, including postage costs, would normally be involved). As explained above, the receipts in question came as the result of a telemarketing campaign in which the advancement of substantial costs, such as postage, was not required.

  
FLOYD G. BROWN

Subscribed and sworn to before me this 2nd day  
of September 1992.

  
Notary Public

My commission expires: 1/31/91

9604370049



REPUBLICAN  
\*\*\*  
CHALLENGERS  
\*\*\*  
COMMITTEE

**Chairman**

Floyd G. Brown

**Board of Directors**

Tony Fabrizio

Alexandria, Virginia

Fran Shane

Philadelphia, Pennsylvania

Craig Shirley

Alexandria, Virginia

John Thompson

Springfield, Missouri

Kirby Wilbur

Kirkland, Washington

**Treasurer**

Robert Miller

San Diego, California

**Counsel**

Paul Sullivan

Washington, D.C.

**National Headquarters**

19145 Woodinville-Duvall Rd.

Suite D-165

Woodinville, WA 98072

**Washington Office**

2020 Pennsylvania Ave.

Suite 322

Washington, D.C. 20006

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COMMISSION  
MAIL ROOM

SEP 25 12 24 PM '92

September, 18 1992

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Attention: George F. Rishel, Esquire  
Assistant General Counsel

Re: MUR 3578

Dear Sir:

I am the Chairman of Republican Challengers Committee (RCC), and I submit this letter in response to your letter of August 14, 1992, directed to Robert E. Miller, Treasurer, Republican Challengers Committee. You requested RCC's response to a complaint of the Democratic National Committee (DNC), filed against RCC and others for alleged violations of the federal laws governing political committees. The matter is pending at the Federal Election Commission (FEC) as MUR 3578.

We would ask that this matter remain confidential.

As far as I can determine, the DNC's charge against RCC is that it was "affiliated" with Presidential Victory Committee ("PVC") and that either or both committees failed to report this to the FEC. But there has been no such affiliation, and thus no affiliation to report.

RCC has not been operative as a political committee since well prior to the time that PVC was formed. Its only activity in 1992 has been in connection

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OFFICE OF THE GENERAL COUNSEL

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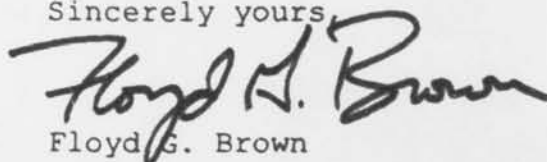
with the retirement of its debt, which was incurred prior to 1992. As review of the 1992 FEC reports filed by RCC will demonstrate, there has been no political activity. Contributions have been minimal, have been made exclusively for the purposes of debt retirement. Disbursements have also been very limited, and have been made principally for costs incurred in preparing FEC reports.

Technically, of course, I am still the Chairman of RCC, and I am also the Chairman of PVC, but I do not believe that that fact establishes affiliation of any kind. RCC and PVC are totally separate and distinct committees, formed for different purposes and different election cycles.

RCC and PVC have different boards of directors, are organized differently, and have different bylaws, etc. I am the only common director.

If RCC had been able to retire its debt, it probably would have sought termination by now. It is not an active political committee, and it should not be deemed affiliated with PVC for any purpose. I believe that RCC's FEC reports entirely support what I have said above, and I would hope that the FEC would dismiss the pending MUR.

Sincerely yours,

  
Floyd G. Brown

FGB:kjh

OGC 6404

VINSON & ELKINS  
L.L.P.  
ATTORNEYS AT LAW

2800 FIRST CITY TOWER  
1001 FANNIN  
HOUSTON, TEXAS 77002-8780  
TELEPHONE (713) 758-2222  
FAX (713) 758-2346

HUNGARIAN EXPORT BUILDING  
UL. VOROVSKOGO, 21  
121069 MOSCOW, RUSSIAN FEDERATION  
TELEPHONE 011 (70-98) 202-8418  
FAX 011 (70-98) 200-4216

47 CHARLES ST., BERKELEY SQUARE  
LONDON W1X 7PB, ENGLAND  
TELEPHONE 011 (44-71) 491-7238  
FAX 011 (44-71) 499-5320

THE WILLARD OFFICE BUILDING  
1455 PENNSYLVANIA AVE., N.W.

WASHINGTON, D. C. 20004-1008

TELEPHONE (202) 639-6500  
FAX (202) 639-6604

WRITER'S DIRECT DIAL  
(202) 639-6578

September 11, 1992

FIRST CITY CENTRE  
816 CONGRESS AVENUE  
AUSTIN, TEXAS 78701-2496  
TELEPHONE (512) 498-8400  
FAX (512) 498-8812

3700 TRAMMELL CROW CENTER  
2001 ROSS AVENUE  
DALLAS, TEXAS 75201-2916  
TELEPHONE (214) 220-7700  
FAX (214) 220-7718

SAGATELA 12  
00-585 WARSAW, POLAND  
TELEPHONE 011 (48-2) 625-33-33  
FAX 011 (48-2) 625-22-45

By Messenger

Mr. George F. Rishel  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 3578

Dear Mr. Rishel:

Reference is hereby made to Complaint MUR 3578, filed by the Democratic National Committee against Mr. Wesley West, the Presidential Victory Committee ("PVC") and the Republican Challengers' Committee. As discussed below, Mr. Wesley West is deceased. The campaign contributions at issue in the Complaint were made by Mr. West's widow, Mrs. Wesley West. This letter constitutes Mrs. West's response for consideration by the Commission in determining whether action should be taken against her.

Facts

Mrs. West is an 84-year-old resident of Houston, Texas. Her husband died in 1984. Since that time, Mrs. West's grandson, Mr. Stuart Stedman, has assisted her in financial matters. In 1991, Mr. Stedman asked our firm to examine Mrs. West's 1990 and 1991 campaign contributions to ascertain whether she had complied with federal campaign contribution limitations. (As a result of that examination, Mrs. West requested and received refunds from various political committees.)

In May of 1992, Mr. Stedman asked our firm to examine Mrs. West's 1992 campaign contributions and determine whether Mrs. West was in compliance with federal campaign finance laws. This request came in response to an inquiry from the National

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Mr. George F. Rishel  
September 11, 1992  
Page 2

Republican Senatorial Committee regarding whether Mrs. West had exceeded the federal campaign contribution limitation on contributions to a national party committee for 1992.

We contacted the various recipients of Mrs. West's 1992 contributions in order to confirm the amounts that had been contributed and ascertain whether the contributions were made to federal or non-federal accounts. In connection with these calls, we contacted the PVC and confirmed that Mrs. West had contributed a total of \$15,000 in 1992 to the PVC's federal account (see Appendix A). (In addition, an examination of Mrs. West's record revealed that she had made excess contributions to the National Republican Senatorial Committee. Mrs. West responded by requesting a redesignation of her 1992 National Republican Senatorial Committee contributions to a non-federal account.)

Later that month, on May 27, 1992, the PVC sent Mrs. West a letter confirming that her contributions to the PVC as of that date totalled \$15,000 and were in excess of the \$5,000 annual limitation (see attached Exhibit 1). The letter also requested that Mrs. West redesignate \$10,000 of her contributions to a PVC non-federal account.

Mrs. West declined the invitation to redesignate some of her PVC contributions. Instead, on June 5, 1992, Mrs. West requested a refund in the amount of \$10,000 from the PVC (see attached Exhibit 2). In the request, Mrs. West explained that the refund would assure that she complied with the annual limitation of \$5,000 per year for contributions by an individual to a political committee.

On June 19, 1992, I spoke by telephone to Mr. Chris Miller, Assistant to the Treasurer of Miller/Roos & Company. Mr. Miller stated that he handled financial and accounting matters for the PVC. Mr. Miller stated that the PVC had received Mrs. West's request for a refund and that the PVC would send a check to Mrs. West in the amount of \$10,000.

On August 13, 1992, Mr. Floyd Brown, Chairman of the PVC, and Mr. David Bossie, Executive Director of the PVC, appeared at the home of Mrs. West (Mr. Stedman was not present) and delivered a refund check, dated August 5, 1992, in the amount of \$10,000 (see attached Exhibit 3). At that meeting, Mrs. West made a \$10,000 contribution to Citizens United.

Mr. George F. Rishel  
September 11, 1992  
Page 3

Law and Analysis

The Federal Election Campaign Act ("the Act") permits individuals to contribute up to \$5,000 per calendar year to a political committee other than a candidate's authorized committee or a national party committee. 2 U.S.C. §441a(1)(C); 11 C.F.R. §110.1(d)(1). If an individual makes a contribution to a political committee which causes his or her aggregate contributions for the calendar year to exceed \$5,000, then the treasurer of the recipient political committee is required to either refund the contribution or request a redesignation or reattribution of the contribution. 11 C.F.R. §103.3(b)(3).

Mrs. West inadvertently contributed more than \$5,000 to the federal account of the PVC. Once apprised of the error, however, Mrs. West promptly requested a refund of \$10,000, an amount sufficient to bring her into compliance with the \$5,000 limitation. Mrs. West's request was granted, and she received a refund of \$10,000. Consequently, Mrs. West's aggregate 1992 contributions to the PVC total \$5,000.

The Federal Election Commission has recognized that, where a contribution exceeds the limitations established in the Act, or the contribution is otherwise illegal, the proper response is to refund the excess or illegal contribution. See, e.g., Advisory Opinion 1980-37; Advisory Opinion 1985-29. In Mrs. West's case, that is precisely what occurred: Mrs. West requested and received a refund of her excess contributions. Therefore, there is no reason to believe that Mrs. West has or is about to commit a violation of the Act or the regulations.

If you have any questions regarding this matter or need any additional documentation, please contact me at (202) 639-6578.

Respectfully submitted,

*Russell W. Sullivan*

Russell W. Sullivan

Attachments

cc: Mrs. Wesley West

## MRS. WEST'S 1992 CONTRIBUTIONS TO THE PVC

Mrs. West's record of contributions to the PVC for 1992 is as follows:

<u>Date</u>	<u>Amount</u>
February 29, 1992	\$ 1,000
March 7, 1992	5,000
March 16, 1992	1,000
March 23, 1992	5,000
March 23, 1992	1,000
May 2, 1992	<u>2,000</u>
Subtotal	\$15,000
August 13, 1992	<u>&lt;10,000&gt;</u> Refund
Total	\$ 5,000

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**MILLER/ROOS & COMPANY**  
POLITICAL REPORTING CONSULTANTS

May 27, 1991

Mrs. Westley West  
3240 Chevy Chase Drive  
Houston, Texas 77019

Dear Mrs. West:

We wish to thank you on behalf of the Presidential Victory Committee for your recent contributions. The Federal Election Code, though, prohibits the committee from receiving contributions in excess of \$5,000.00. The Presidential Victory Committee-State is, however, a California State Committee, (I.D. #921478) that may legitimately receive your contribution.

We would like to deposit all of your excess contributions into that account. If this meets with your approval, please date and sign below and return to us promptly in the enclosed self-addressed envelope.

California law requires donors to file certain reports when their annual contributions to state committees aggregate \$10,000 or more. You should count these excessive contributions toward that threshold.

If we can be of assistance, kindly contact us. Thank you again for your generous contribution.

Sincerely,

Chris Miller  
Assistant to the Treasurer

CJM/la

Enclosure

APPROVED

Date

96043770876



M R S. W E S L E Y W E S T  
 3340 CHEVY CHASE DRIVE  
 HOUSTON, TEXAS 77019

June 5, 1992

Mr. Dave Bossie  
 Executive Director  
 Presidential Victory Committee  
 38 Ivy Street, S.E.  
 Washington, D.C. 20003

Dear Mr. Bossie:

I have been a strong supporter of the Presidential Victory Committee. I have been solicited numerous times and have contributed significant amounts to your organization.

For the year 1992, however, I have inadvertently exceeded the \$25,000 limitation on contributions to federal campaigns and organizations supporting federal campaigns. Consequently, in order to comply with federal campaign finance law, I must request a refund in the amount of \$10,000. This amount represents all or a portion of the following contributions:

<u>Date</u>	<u>Amount</u>	
3-07-92	\$ 1,000	(out of a \$5,000 contribution)
3-16-92	1,000	(entire contribution)
3-23-92	5,000	(entire contribution)
3-23-92	1,000	(entire contribution)
5-02-92	2,000	(entire contribution)
Total	\$10,000	

A refund of \$10,000 will assure that I comply with the \$25,000 limitation as well as the \$5,000 limitation on contributions to federal accounts of political action committees. Please send the refund to me at 3420 Chevy Chase Drive, Houston, Texas 77019. Thank you for your cooperation in this matter.

Yours very truly,

*Mrs. Wesley West*

Mrs. Wesley West

lc

cc: Mr. Chris Miller  
 Assistant to the Treasurer  
 Miller/Reos and Company  
 1200 Third Avenue, Suite 700  
 San Diego, CA 92101

96043770877

THE GEORGE  
MASON BANK  
NATIONAL CHARITABLE FOUND

PRESIDENTIAL VICTORY COMMITTEE INC. 202

AUGUST 5 1992

1127

20-441700

PAY TEN THOUSAND AND 00/100  
TO THE ORDER

DOLLARS \$ 10,000.00

REFUND

MRS. WESLEY WEST  
3240 CHEVY CHASE DR  
HOUSTON, TX 77019-3210

*Linda D. West*

**MUR 3638**

**COMPLAINT - OCTOBER 5, 1992**

96043770879

OCT 2 3 45 PM '92

UNITED STATES OF AMERICA  
Before the  
FEDERAL ELECTION COMMISSION

THE DEMOCRATIC NATIONAL  
COMMITTEE,

430 South Capitol St.,  
Washington, DC 20003  
(202) 863-8000

v.

RESPONSE DYNAMICS, INC., DIRECT  
RESPONSE DATA MANAGEMENT SERVICE,  
AMERICAN TELEPHONE MARKETING  
GROUP, INC., THE BEST LISTS, INC.,  
AMERICAN GRAPHIC DESIGN INC.,

each located at:  
2070 Chain Bridge Road  
Suite 400  
Vienna, Virginia 22182

MID-AMERICA PRINTING CO.,  
FULFILLMENT MANAGEMENT SERVICES,

each located at:  
1150 International Pkwy  
Fredericksburg, VA 22405

NATIONAL SECURITY POLITICAL  
ACTION COMMITTEE,

3200 Morrison St., NW  
Washington, DC 20015

REPUBLICAN CHALLENGERS COMMITTEE,

450 A Street, 2nd Fl.,  
San Diego, CA 92101

MUR NO.

3638

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FEDERAL ELECTION COMMISSION  
OCT 2 1992

COMPLAINT OF THE DEMOCRATIC NATIONAL COMMITTEE

1. This Complaint charges that several corporations under common ownership (collectively, the "Vendors") have made illegal campaign contributions by extending commercially unreasonable credit and forbearing from collecting debts owed

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to them by two political committees, the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC"), in violation of the Federal Election Campaign Act of 1971, 2 U.S.C. § 431, et seq., as amended ("FECA"). 1/ The amount of these substantial debts is markedly disproportionate to the size of the vendors and the political committees involved..

#### PARTIES

2. Complainant Democratic National Committee ("DNC") is the national committee of the Democratic Party, as defined in 2 U.S.C. § 431(14), and is a political committee registered with the Federal Election Commission ("FEC"). The DNC is located at 430 S. Capitol Street, SE, Washington, DC 20003.

3. Respondents Response Dynamics Inc., Direct Response Data Management Service, American Telephone Marketing Group Inc., The Best Lists, Inc., and American Graphic Design, Inc. are corporations with their principal places of business at 2070 Chain Bridge Road, Suite 400, Vienna, Virginia 22182. Respondents Fulfillment Management Services, Inc. and

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1/ On August 11, 1992, the DNC filed a complaint that demonstrated that the Republican Challengers Committee and the Presidential Victory Committee are "affiliated" committees for purposes of the FECA because of their common control by Floyd Brown, among other reasons.



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Management Services, Inc. and Mid-America Printing Co. are corporations with their principal places of business at 1150 International Parkway, Fredericksburg, VA 22405. According to the Almanac of Federal PACs: 1990, these Vendors are all owned by Ronald Kanfer and David Kunko.

4. Respondent National Security Political Action Committee is a political committee registered with the FEC.

5. Respondent Republican Challengers Committee is a political committee registered with the FEC. As set forth in its complaint filed on August 11, 1992, the DNC believes that RCC is affiliated with the Presidential Victory Committee, another political committee controlled by Floyd Brown.

#### APPLICABLE STATUTES AND REGULATIONS

6. It is unlawful for any corporation to make a contribution in connection with a presidential election. 2 U.S.C. § 441b. It also is unlawful for any political committee knowingly to accept or receive a corporate contribution. Id.

7. The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. 11 C.F.R. § 100.7(a)(4).

GROUNDNS FOR COMPLAINT

8. NSPAC was formed in 1986 by Elizabeth Fedaiay to address national security issues. Operating from Ms. Fedaiay's home, it raised relatively small amounts from contributors. In the spring of 1988, however, NSPAC was suddenly transformed. It began raising vast sums of money, moved its operations to a downtown Washington office, and hired a number of veteran political operatives. Among those hired was Floyd Brown.

9. Floyd Brown and his colleagues worked with NSPAC to devise the notorious "Willie Horton" advertisement. National Journal (May 30, 1992) at 1309 (Exhibit 1). The purported independent expenditures by NSPAC involving the production of that advertisement were challenged in MUR 3069 and related federal court litigation.

10. NSPAC's extensive direct mail fundraising appeals were largely designed and conducted by the Vendors, which had previously orchestrated similar "independent" political committee efforts promoting the unsuccessful candidacies of Bob Dole and Jack Kemp. Almanac of Federal PACs: 1990 at 590 (Exhibit 2). During the course of its efforts in the 1988 presidential election cycle, NSPAC amassed very substantial debts to the Vendors, which remain outstanding to the present date. For instance, American Telemarketing was owed \$192,542.25 as of NSPAC's May FEC 1989 report; as of the most recent report, this vendor is owed \$340,562.40. Response

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Dynamics was owed \$447,968.17 in May 1989 and \$413,702.78, as of June 30, 1992. Best Lists was owed \$119,062.05 in May 1989 and \$116,072.15 as of June 30, 1992. As of June 30, 1992, Mid-America Printing, American Graphic Design, Direct Response Data Management and Fulfillment Management Services are owed \$54,252.25, \$12,957.03, \$83,321.55, and \$248,071.62, respectively.

11. The total debt owed by NSPAC to the Vendors is \$1,268,939.28. NSPAC has identified the purpose of its transactions with several of the Vendors as independent expenditures in support of the 1988 George Bush for President campaign. See July 15, 1992 Quarterly Report.

12. Floyd Brown has moved on from NSPAC to become the chairman of two other political committees -- the Presidential Victory Committee ("PVC") and the Republican Challengers Committee. See Washington Post, July 9, 1992 (Exhibit 3); RCC July 20, 1992 FEC Report. PVC registered with the FEC on February 10, 1992; RCC registered on December 5, 1989. Most of RCC's directors are consultants who were involved with NSPAC. National Journal (July 21, 1990) at 1784 (Exhibit 4).

13. The intentions of Floyd Brown are clear: PVC has announced its plan to produce attack ads to promote the re-election of President Bush, "noting that there should be plenty of grist for negative advertising [against Governor Clinton]." Philadelphia Inquirer, Mar. 31, 1992 (Exhibit 5).

14. Press reports also reveal that Brown and other NSPAC veterans collaborated to produce an ad attacking Senator Edward Kennedy. Significantly, the ad was financed by Ronald Kanfer, president of Response Dynamics and co-owner of the Vendors. Washington Times (November 21, 1991) at A6 (Exhibit 6).

15. Despite the huge unpaid bills from their work for Brown's last effort with NSPAC, each of the Vendors now is doing business with PVC and RCC according to the committees' FEC filings. More significantly, the Vendors once again are extending substantial credit to Brown's group, this time RCC and, given the indicia of affiliation, indirectly to PVC.

16. Although the September 20, 1992 report of RCC lists year-to-date receipts of only \$756.87, the Vendors have collectively extended credit to this scantily funded committee in the amount of \$95,027.77 as of August 31, 1992, according to the report.

17. The DNC is unable to ascertain the exact status of RCC's debts to the Vendors because the recent reports filed by RCC contain material inaccuracies. The Schedule D filed by RCC for its July 20, August 20 and September 20 reports are identical copies. For example, each one lists a \$108.94 debt incurred to Washington Intelligence Bureau during the reporting period, but also lists the same beginning and ending balance due (\$2,583.06 and \$2,692.00) to that vendor. In addition,

each report lists a \$364.62 payment to Premier Press, but the summary page for the August 20 and September 20 lists only \$10 of total disbursements during the period. It appears that copies of previous reports were photocopied and submitted to the Commission, without being revised to reflect the committee's true activity.

18. On information and belief, the Vendors have made illegal contributions to NSPAC because the credit has not been extended in the ordinary course of business and the terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. On information and belief, the Vendors have failed to make a commercially reasonable attempt to collect the debts from NSPAC.

19. On information and belief, to confirm the atypicality of the Vendors' treatment of these debts, it is believed that respondent Response Dynamics has filed suit against at least one other customer to collect a debt smaller than that owed by NSPAC. No suit has been commenced against NSPAC or RCC.

20. On information and belief, NSPAC has knowingly accepted the prohibited contributions.

21. On information and belief, the Vendors have made illegal contributions to RCC because this credit has not been extended in the ordinary course of business and the terms are



not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

22. On information and belief, RCC has knowingly accepted these illegal contributions.

23. The DNC respectfully urges the FEC to conduct a prompt and thorough investigation into the allegations of this complaint. The DNC further urges the FEC to declare that the respondents have violated the FECA, and impose penalties as provided by FECA. Finally, the DNC urges the FEC to investigate whether the violations described above were knowing and willful so as to mandate the enhanced penalties set forth in 2 U.S.C. § 437g(a)(5)(B).

Respectfully submitted,



Carol Darr  
Eric London  
Democratic National Committee  
430 South Capitol Street  
Washington, DC 20003  
(202) 863-8000

October 2, 1992

VERIFICATION

The undersigned counsel for complainant DNC swears that the statements in this complaint are based on the sources indicated, and, as such, are true and correct to the best of ~~her~~ his information and belief.

  
\_\_\_\_\_  
Carol Darr

Subscribed and sworn before  
me this 2nd day of October, 1992

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

SUZANNE ABELE-EBANKS  
NOTARY PUBLIC, DISTRICT OF COLUMBIA  
My Commission Expires October 31, 1994

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IN PERSON: FLOYD G. BROWN

## THE THUNDERBOLT FROM THE RIGHT

BY CAROL MATLACK

Take cover. Floyd G. Brown, the conservative activist who brought America the Willie Horton television spot in 1988 and ran attack advertisements against Senate Democrats during the Clarence Thomas hearings, is back.

Brown has set up the Presidential Victory Committee, a political action committee (PAC) that's raising money for a new barrage of ads against George Bush's opposition this fall. He's not ready to disclose any details—for one thing, he doesn't yet know whether he'll be attacking Bill Clinton, Ross Perot or both. But those who know Brown expect him to land a solid punch.

"Floyd's talent is to recognize political opportunities... things that will hit the right chords with the public," said Brent Bozell, a fellow conservative who worked with Brown on the Clarence Thomas ad, which questioned the moral fitness of some Senate Democrats to vote on Thomas's nomination.

A visitor who turns up at Brown's suburban Virginia office looking for an evil genius may be in for a surprise. Brown is a strapping 31-year-old who looks like an overgrown Dennis the Menace, complete with an engaging grin and a knack for political mischief.

Brown, the son of a sawmill worker in the Pacific Northwest, grew up in a Democratic household but became a Republican convert at age 15, when he volunteered to work on Ronald Reagan's 1976 presidential campaign. Reagan's embrace of "conservative, traditional values" attracted him, he recalled.

By 1980, he was organizing college students for Reagan; after graduating from the University of Washington in 1983, he headed to Washington to work for Young Americans for Freedom. His first big achievement was getting arrested for burning a flag outside the Soviet Embassy during a protest of the Soviet invasion of Afghanistan. (His appeal of his conviction led to a 1988 Supreme Court decision striking down a District of Columbia ban on demonstrations outside embassies.)

In 1986, Brown became Midwest field director for the presidential campaign of Sen. Robert Dole, R-Kan. Donald Devine, Dole's campaign manager, remembers Brown as a "tireless" worker with an aptitude for attracting the atten-

tion of the news media. "He gets free media at about 10 times the rate he pays for it," Devine said.

While he was casting about for job ideas after the collapse of the Dole campaign, Brown got a call from the National Security Political Action Committee, a direct-mail operation that was raising money for an independent spending campaign in support of Bush. Brown, who had been introduced to the direct-mail business through a part-time college job with the Citizens Committee for the Right to Keep and Bear Arms, agreed to come aboard. One of his first antics: sneaking an anti-Democratic video onto the closed-circuit television channel in delegate hotels at the Democratic National Convention. And, at a Labor Day weekend meeting with four other leaders of the PAC, he helped to devise the infamous Willie Horton ad.

When the ad hit television, all hell broke loose. Democrats denounced it as racist; Republicans called the PAC's leaders "bloodsuckers" who had duped donors into thinking that they were contributing to Bush. (The Bush campaign has lodged a similar complaint this year against Brown's new PAC.) Critics noted that although the PAC raised \$10.3 million, more than any other PAC that year, most of the money was consumed by mail and telemarketing. Only about \$800,000 was spent on the Horton ad, which aired on cable TV systems.

Brown said that he didn't mind the

criticism, even from the supposed beneficiaries of the ad. "I'm not in this to be loved by the country clubbers who are housed at the White House," he said.

Brown, in fact, doesn't much care for Bush. He says that the conservative movement has been in decline since 1980, when conservatives "got into government, got into good jobs, became lobbyists. They forgot their roots."

So why is he backing Bush? Brown says he figured that mounting a conservative challenge to Bush would be fruitless this year and that Bush was more palatable than Clinton or Perot.

Brown admits that his task this year may be difficult. He'd initially planned an attack on Clinton's character, but Perot's sudden rise has complicated the picture. And Bush's sagging popularity has hurt Brown's fund-raising efforts; he's already lowered his sights from \$10 million to \$8 million and has mailed out 6,000 videotapes to past donors in hopes of prying loose more money.

In the meantime, he has other irons in the fire. In 1988, he started Citizens United, a direct-mail-based citizens group that has petitioned for the removal of House Speaker Thomas S. Foley, D-Wash., and lobbied against statehood for the District of Columbia. (See *NJ*, 11/16/91, p. 2807.) The group has about 100,000 donors.

Brown says that he expects controversy to follow him wherever he goes. But, he said, "I believe in aggressive messages."



Richard A. Blum

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an uncertain future following the late 1986 AIDS- related death of its founding director, John T. (Terry) Dolan.

The organization's fundraising has fallen way below the pace it set in previous years. And, the group was saddled with a multi- million dollar debt, much of it owed to New Right direct mailer Richard Viguerie.

NCPAC was brought to national prominence in 1980 when its negative independent media campaigns were credited with helping defeat four incumbent Democratic senators: Birch Bayh of Indiana, Frank Church of Idaho, John Culver of Iowa and George McGovern of South Dakota. Two other NCPAC targets survived: Alan Cranston of California and Thomas Eagleton of Missouri.

NCPAC was founded in 1975 by Roger Stone, Charles Black and John T. (Terry) Dolan with help from Sen. Jesse Helms (R-N.C.) and Viguerie.

### NATIONAL CONSERVATIVE PAC

FEC ID: C00024687 • Robert L. Shortley, Treas.  
1001 Prince St. • Alexandria, Va. 22314

Cycle	Receipts	Expenditures	Contributions	Democrats	Republicans
1987-88	2,205,154	2,339,521	79,457	1,366	78,091
1985-86	9,319,550	9,349,810	55,919	1,169	54,472
1983-84	19,514,822	19,332,000	128,241	5,222	122,476
1981-82	10,001,459	10,120,520	264,357	23,911	237,531
1979-80	7,648,540	7,530,060	237,806	21,393	213,618
1977-78	2,842,851	3,032,008	219,874	38,949	179,875

### National Security PAC

3050 K St. NW #310  
Washington, D.C. 20007  
202/944-4777

In terms of overall fundraising prowess, NSPAC was the country's biggest federal PAC during the 1987-88 election cycle, owing much of its success to a collection of related direct mail and telemarketing companies in Vienna, Va.

NSPAC raised and spent more than \$10.2 million during the two- year period. Besides money given directly to candidates, the group also claims it made over \$8 million worth of independent expenditures to promote George Bush's presidential candidacy.

Certainly, some of the money was well-spent for Bush. The group was responsible for airing pro-Bush television commercials that featured convicted rapist Willie Horton to focus attention on Democratic candidate Michael Dukakis' perceived liberal treatment of criminal offenders. While Dukakis was governor of Massachusetts, Horton was given a furlough from

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the prison where he was serving a life sentence for first-degree murder and he went to Maryland where he kidnapped a young couple, stabbing the man and raping the woman.

But the lion's share of the money listed as "independent expenditures" by NSPAC were, in reality, fundraising expenditures in that the money was spent for mailings and telemarketing to generate cash for its operations.

Under the Federal Election Commission's recordkeeping rules, however, expenditures for materials which include reference to a clearly identified candidate for federal office must be accounted for as election-related, either as a direct or in-kind contribution or as an independent expenditure. Thus, even though the purpose of the mailings was to generate money for NSPAC, the payments were reported as independent expenditures because they mentioned George Bush and/or Michael Dukakis.

NSPAC was established in 1986 by Elizabeth I. Fediy who ran the committee from a bedroom in her home. Her father, Victor, has been employed for many years as a consultant to the Senate Foreign Relations Committee. NSPAC's advisory board includes former Joint Chiefs of Staff chairman Adm. Thomas Moorer, retired Rear Adm. C.A. "Mark" Hill and former U.S. Sen. Jeremiah Denton (R-Ala.). Besides "Americans for Bush," NSPAC sponsored a lesser-known fundraising project in 1988 called the "Senate Victory Fund" which made independent expenditures for seven Republican senatorial candidates: Pete Dawkins (N.J.), Orrin Hatch (Utah), Chic Hecht (Nev.), Connie Mack (Fla.), Malcolm Wallop (Wyo.) and Pete Wilson (Calif.).

Most of NSPAC's direct mail and telemarketing fundraising was designed and conducted by Response Dynamics Inc. and seven related companies: American Telephone Marketing Group Inc., The Best Lists Inc., American Graphic Design Inc., Mid-America Printing Co., Direct Response Data Management Service, Telemarketing Results Inc. and Fulfillment Management Service.

All eight companies are owned by Ronald Kanfer and David Kunko who gained their direct mail marketing experience working at another political direct mail company, Bruce Eberle & Associates.

The Kanfer-Kunko companies designed similar direct mail fundraising appeals for two other clients which conducted independent expenditure campaigns to promote the presidential candidacies of Bob Dole and Jack Kemp (see American Citizens for Political Action and Conservative Victory Committee).

Response Dynamics retains the names and addresses of people who respond to fundraising solicitations and markets those lists to organizations seeking to raise financial support for conservative causes, or to market goods or services to individuals who have demonstrated their past financial support for conservative causes.

Bush's campaign filed a formal complaint with the FEC in June, 1988, accusing NSPAC of violating federal election laws by claiming to poten-

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tial donors in telephone solicitations that "Americans for Bush" was the candidate's authorized campaign committee. The complaint was filed just as NSPAC was reaching the peak of its fundraising activity (the committee's financial disclosure reports show it raised and spent \$6.2 million between July 1 and mid-October).

By late 1989, the FEC still hadn't completed the enforcement case that was precipitated by the Bush campaign's complaint. It was among several hundred complaints filed during the 1988 election year.

#### NATIONAL SECURITY PAC

FEC ID: C00205716 • Elizabeth I. Fediay, Treas.

1919 Pennsylvania Ave. NW #300 • Washington, D.C. 20036

Cycle	Receipts	Expenditures	Contributions	Democrats	Republicans
1987-88	10,277,264	10,279,012	100,474	1,000	99,474
1985-86	291,761	268,191	11,450	0	11,450

#### Republican Congressional Boosters Club

300 First St. SE

Washington, D.C. 20003

202/554-5056

The Republican Congressional Boosters Club was started by Republican members of Congress and major party contributors to 1964 to raise funds and make early contributions to GOP challengers against Democratic House and Senate incumbents.

Contributing members who pay from \$1,000 to \$5,000 per year can use the Club's offices, telephones and secretaries when visiting Washington. And, the Club's staff helps members arrange appointments with Republican lawmakers and government officials.

Sen. John McCain (R-Ariz.) and Rep. Richard B. Cheney (R-Wyo.) are the Club's chairmen and former President Gerald R. Ford is its honorary chairman. The executive committee consists of Sens. Bob Dole (R-Kan.) and Alan Simpson (R-Wyo.) and Reps. Bob Michel (R-Ill.) and Trent Lott (R-Miss.). Ms. Beebe Bourne is the Club's director.

#### REPUBLICAN CONGRESSIONAL BOOSTERS CLUB

FEC ID: C00000810 • Eric F. Stoer, Treas.

300 First St. SE • Washington, D.C. 20003

Cycle	Receipts	Expenditures	Contributions	Democrats	Republicans
1987-88	375,409	395,494	84,500	4,500	80,000
1985-86	593,141	543,932	118,500	0	118,500
1983-84	564,508	584,712	151,500	0	151,500
1981-82	569,693	539,016	318,500	0	318,500

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# Hitting Clinton With Flowers by Wire

## Operative Behind Horton Ad to Promote Call-In for 'Intimate' Tapes

By Howard Kurtz  
Washington Post Staff Writer

The Republican operative who brought you the Willie Horton ad is back, and this time his subject is Gennifer Flowers.

Floyd G. Brown, who heads an independent group promoting President Bush's reelection, plans to air attack ads next week about Flowers's allegation that she had a 12-year affair with Arkansas Gov. Bill Clinton. The ad urges viewers to call a Nevada number, set up by Brown, "to hear Flowers's tapes of their intimate conversations."

The 30- and 60-second television spots combine two of the most noteworthy features of the 1992 campaign: new technology (a phone service that the ad says will cost \$4.99 per call) and tabloid sleaze (Flowers first sold her allegations to the supermarket magazine Star).

Brown, who has scheduled a news conference this morning, is recycling a technique he used with the Horton ad, trying to parlay a modest television buy

### THE AIR WARS

into millions of dollars' worth of free publicity (including articles like this one). It is also a fund-raising gimmick: Brown said he will make about a 50 percent profit on each call and will use the proceeds to buy more advertising.

"What really happened between Bill Clinton and Gennifer Flowers?" the ad says. "Did he lie about their affair? Did he try a coverup? Call [the number] and get to know Bill Clinton the way Gennifer Flowers did."

Brown said he has bought time on CNN's New York stations during the Democratic National Convention but would not disclose the cost.

Bush campaign spokeswoman Torie Clarke said yesterday that "we have absolutely nothing to do with Floyd Brown. We have put as much distance between ourselves and Floyd Brown as legally and otherwise possible. . . . We do not condone it in any way. We are not interested in the sleazy stuff at all."

Brown replied that "the Bush campaign has its own problems. If they don't want to engage their enemy, I stand ready to do that." He said the ad was legitimate because "the character of a potential president of the United States is very important."

Frank Greer, media consultant for Clinton's Democratic presidential campaign, said that "this is exactly the kind of sleazy, negative politics that people in America are sick and tired of. It is the responsibility of the White House to have this kind of trash taken off the air." Clinton adviser Betsey Wright called it "despicable" that Brown "is trying to make money from Gennifer Flowers's lies," noting that experts hired by two news organizations found the tapes had been selectively edited.

Clinton, while acknowledging his marriage has had troubled periods, has repeatedly denied Flowers's allegations.

Bush's 1988 campaign disavowed the Horton ad but was widely seen as benefiting from its racial overtones. The ad pictured Horton, a black convict who raped a white woman while on a furlough program under then-Massachusetts Gov. Michael S. Dukakis, the Democratic presidential nominee. "When we're through, people are going to think that Willie Horton is Michael Dukakis's nephew," Brown predicted in 1988.

A Federal Election Commission inquiry found some discussions between a 1988 Bush campaign official and the producer of the Horton ad but closed the case without taking action.

Last fall, Bush dissociated himself from another Brown ad that assailed Sens. Edward M. Kennedy (D-Mass.), Joseph R. Biden Jr. (D-Del.) and Alan Cranston (D-Calif.) during the Clarence Thomas confirmation battle.

Brown, who once worked for the presidential campaign of Sen. Robert J. Dole (R-Kan.), is now chairman of the Presidential Victory Committee, a political action committee that hopes to raise \$8 million this year through direct mail. He also raises money under the name Citizens for Bush, telling donors in a letter this month, "I am hoping to launch a project that could affect the entire election. . . . This is a highly confidential, very sensitive project."

Bobby Burchfield, the Bush campaign's general counsel, has asked Brown in a letter to "immediately cease" soliciting money under those names "or any similar designation that raises the possibility of confusing your efforts with those of Bush-Quayle '92." Burchfield also disavowed any link in letters to Brown's donors, identified through FEC records. Brown said his mailings make clear that he is not part of the Bush campaign.

While the White House has been trying to make family values a prime issue, one GOP strategist predicted the ad will backfire. "The public doesn't understand this independent-expenditure business," he said. "It looks like the Republicans are taking a cheap shot."

The allegations by Flowers, a nightclub singer and former Arkansas state employee, disrupted Clinton's campaign before the New Hampshire primary. At a news conference, she played excerpts of what she said were taped phone conversations between her and Clinton, but never released copies.

Clinton said Flowers was just a "friendly acquaintance." He in effect confirmed that his voice was on the tapes by apologizing to New York Gov. Mario M. Cuomo (D) for having said that Cuomo "acts like" a member of the Mafia.

The Brown ad includes a clip of Flowers saying, "Listen to the tape excerpts. Judge for yourself if this is the way a man talks to a woman that is just a friendly acquaintance."



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National Journal

July 21, 1990

SECTION: WASHINGTON UPDATE; Policy and Politics in Brief; Campaign Notes; Vol. 22, No. 29; Pg. 1784

LENGTH: 679 words

HEADLINE: NOW, A PAC JUST FOR GOP CHALLENGERS

BYLINE: BY CAROL MATLACK

## BODY:

With Republicans grouching about political action committees' (PACs) contributing to Democratic congressional incumbents, it's no surprise someone has started a PAC exclusively for Republican challengers.

But the new group, the Republican Challengers Committee, has picked a surprising target for its first major effort. It recently announced plans for a \$ 1 million independent expenditure campaign against David Duke, a member of the Louisiana Senate and one of two Republicans running against Democratic Sen. J. Bennett Johnson in the Oct. 6 primary. If a candidate wins a majority, he is elected; if not, the two top candidates oppose each other on Nov. 6.

"We have never said that we won't be involved in contested primaries," said Floyd G. Brown, the committee chairman, explaining the decision to oppose Duke. "David Duke is bad for the Republican Party, for the conservative movement," Brown said. Duke, a former leader of the Ku Klux Klan, "bastardizes our message," Brown said. "It's absolutely imperative that this man be stopped."

Brown said the committee is preparing a direct-mail blitz against Duke and will start running an anti-Duke television spot on Louisiana stations in mid-August. The advertisement was produced by Larry McCarthy, producer of the infamous Willie Horton TV spot in the 1988 presidential race. Brown, a political consultant who now lives in Woodinville, Wash., was a consultant to the National Security PAC, which paid for the Horton ad as part of an independent expenditure campaign supporting George Bush.

There are other connections between the National Security PAC and the Republican Challengers Committee, which Brown established last December. All five members of the committee's board of directors are professional consultants, and most of them were involved with the National Security PAC. Like that PAC, the committee expects to make independent expenditures -- which by law cannot be coordinated with candidates' official campaign committees -- rather than direct contributors to candidates. And the committee is relying heavily on Response Dynamics Inc. of Vienna, Va., and a group of affiliated firms that ran the National Security PAC direct-mail and telemarketing operations in 1988.

The committee's fund raising so far has been meager. As of May 31, Federal Election Commission (FEC) records show, the group had raised \$ 55,356, had spent \$ 46,433 and had \$ 62,156 in debts. Virtually all of its expenditures and debts were for services provided by the Response Dynamics companies; the committee reported no spending for or against candidates. Brown said that most of the

spending so far has been for direct-mail "prospecting" and that he expects contributions to soar after the group launches its ad against Duke.

Brown is billing the committee \$ 1,000 a month for his services. Craig Shirley, an Alexandria (Va.) consultant who serves on the group's board, has been paid \$ 4,000 in professional fees, and Brown said that if other board members provide services, they will receive "reasonable" compensation as well.

But Shirley said that the group's directors don't expect to profit from the operation. "Our dedication to our principles supersedes our greed for money," he said.

Independent expenditure efforts aren't always popular with the candidates they purport to help, because they can draw away donations that otherwise might have gone directly to candidates. In 1988, Bush's campaign complained to the FEC that the National Security PAC was raising money by misrepresenting itself as Bush's official campaign committee.

"Oh, no," groaned Jan W. Baran, legal counsel to the National Republican Senatorial Committee and the National Republican Congressional Committee, when he heard that former National Security PAC operatives were running the Republican Challengers Committee. But, Baran said that he hasn't heard any complaints about the group from the Republican operatives. "The Republican Challengers Committee is not on the radar screen at this time," he said.

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ates in the nation (CHARLOTTE OBSERVER, 3/30).

SILBER: BU pres. John Silber, who some reports had mentioned as a possible Perot VP, said he spoke with "a person claiming to be part of Ross Perot's organization ... I did not know anything of his relation to the Perot organization ... If Ross Perot wanted me as his running mate, he would call me directly" (DALLAS MORNING NEWS, 3/31). A Perot spokesperson in Dallas denied the reports as well (L.A. TIMES, 3/31).

QUOTABLE, NOTABLE: GOP strategist Ed Rollins: Perot "can wreak havoc on the whole political process" (HOUSTON CHRONICLE, 3/30). Berkeley's Nelson Polsby: "He's wasting his money. He's never held public office in his life and therefore totally unqualified to be president" (USA TODAY, 3/31). W. POST editorial praises his highlighting the deficit: "He is not ducking the number one serious issue" (3/31). POST's John Mintz examines the growing Perot phone bank operation (3/31). USA TODAY notes his 800 number got 54,000 calls after his 3/29 appearance on "60 Minutes" (3/31).

TV: '80 candidate John Anderson: "He might even have the means to stage his own convention. It seems to me he'd be wise to do that. To assemble a cast of some of the most distinguished people in the country willing to speak out in support of his candidacy. Particularly people that are experts in various areas; education, the environment, fiscal and budget policy. Have those speak in his behalf at a convention, competing as it were, with the major parties. If he seems to be capable of doing that, then I think his candidacy will take on new credibility and he will take on new stature" (CNN, 3/30). NBC, CBS, CNN reported Stockdale's selection. Stockdale was interviewed on NBC's "Today." On being on the fall ticket: "That's up to Ross -- I don't count on that." On Perot: "He's had an impeccable life that would withstand any sort of scrutiny" (3/31).

\*8 CUOMO: SPECULATION MILL CRANKS UP OVER CA TRIP

ALBANY TIMES-UNION's Tom Precious notes Cuomo's "rare overnight trip" to CA 4/10-11, "where he will speak to fund-raisers" and the CA Dem convention. The trip comes 3 days after the NY primary; should Brown "do well against Bill Clinton ... speculation will intensify over the chances for a brokered national convention, in which Cuomo or some other party leader could emerge as the eventual nominee." Some CA Dems "who have backed Cuomo's [WH] ambitions theorize that [he] may be trying to rally -- or at least maintain -- support in case the convention is deadlocked." L.A. \$-raiser/DNC exec. board member Rosiland Wyman: "We're stunned. We've tried to get him out here many, many times. It's a very interesting time to be coming." Under statutes "recently changed under a court order," the CA Sec/State can add a candidate to the ballot as late as 4/4 (3/31).

\*9 BUSH: THEY'RE BAAAAAACK -- WILLIE HORTON ROUND II?

The Presidential Victory Cmte, a conservative group that produced the Willie Horton ads in '88, announced the formation of an independent cmte that plans to spend \$10M on attack ads to promote Bush's re-election. PVC chair Floyd Brown "said their should be plenty of grist for negative advertising" if Clinton wins the Dem nomination: "Every time I pick up the morning newspaper, I feel like a kid in a candy store. The fact is that he is just very vulnerable ... It's not just Gennifer Flowers.



not just the S&L deals. It's not just that he smoked marijuana. ... There are so many things that it just accumulates." The Bush-Quayle camp released a hand-written letter to Brown, complaining about his use of the name "Citizens for Bush" in some of his fund-raising literature. Brown said the PVC "will be careful to abide by the election laws and will avoid any contact with the Bush campaign." Bush had similarly objected to '88 efforts of the Nat'l Security PAC -- PVC's predecessor -- but a FEC report released earlier this year "found evidence suggesting" a Bush camp official "had a secret role in planning the Willie Horton ads" (Demick, PHILA. INQUIRER, 3/31). ABC's Ann Compton: "Nothing sells better politically these days than the anti-government sentiment sweeping the nation's voters. President Bush taps those sentiments every chance he gets." Compton also reported Floyd Brown was again campaigning as a private citizen for the re-election of Bush: "Bush plans to wrap all this anti-government sentiment into one major address this week demanding reform and he wants to be part of it. ... This year he calls himself 'the ally of change fighting against the defenders of the status quo'" (3/31). NBC's Jim Miklaszewski: "You know George Bush protests too much. He says he may want to run a clean campaign, but if Bill Clinton becomes the Democrat candidate this campaign will turn ugly or uglier in a big hurry." Video of Willie Horton ad. Miklaszewski: "In the category for political attack ads this one could have won an Oscar. ... It's creator is gearing up to do it again, this time to Bill Clinton." Floyd Brown: "Every time I pick up the morning newspaper I feel like a kid in a candy store. He is very vulnerable." Dem strategist Bob Squier: "This is going to be the toughest election that we have ever seen in American politics" ("Today," NBC, 3/31). CBS' Bill Plante: "At the same time that the White House was disavowing the outside effort on the one hand, a [WH] official was telling reporters about the campaign Mr. Bush intends to run. ... The president won't attack Clinton's character, but, said the official, the president will simply let others worry about that" (CBS, 3/31).

#### \*10 BUCHANAN: BACK ON THE CAMPAIGN TRAIL

Declaring himself "tanned, rested and ready," Buchanan said he would return to the campaign trail after a two week hiatus. But he declined to attack Bush, turning his "biting remarks" to Congress instead (N.Y. TIMES, 3/31). He singled out Rep. Stephen Solarz (D-NY), calling him the "check-kiting Marco Polo of Capitol Hill" to emphasize the state of a Dem-controlled Congress (Richard Sisk, N.Y. DAILY NEWS, 3/31). Although maintaining his candidacy, Buchanan "had lots of advice on how Mr. Bush can serve the GOP cause and strengthen his candidacy." He said Bush had a "golden" opportunity because Congress has never been held in greater contempt (Ralph Hallow, W. TIMES, 3/31). Buchanan spokesperson Greg Mueller "said the campaign's focus would be pulling Bush to the right rather than defeating him for the nomination": "We'll focus on the differences between where Bush is taking the Republican Party and the country and where Pat Buchanan would take them" (John Yang, W. POST, 3/31). Bush camp spokeswoman Torie Clarke maintained that Buchanan's return is "largely irrelevant": "We are going to continue doing what we've been doing all year long: campaigning hard in all states and winning all the primaries." Buchanan plans to spend time in WI

96043770903

11TH STORY of Level 1 printed in FULL format.

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The Washington Times

November 20, 1991, Wednesday, Final Edition

SECTION: Part A; NATION; INSIDE THE BELTWAY; Pg. A6

LENGTH: 920 words

BYLINE: John Elvin; THE WASHINGTON TIMES

BODY:

SORRY STATE

Democratic presidential aspirants have gone on record as a single voice favoring statehood for the District of Columbia. A story yesterday in The Washington Times quoted a White House spokeswoman as saying the administration hadn't taken a position on Delegate Eleanor Holmes Norton's bill to create a small federal enclave surrounded by a new state.

"That indicates a retreat by the president from his former position that he would veto any statehood legislation," said Howard Phillips, president of the Conservative Caucus, who has followed the statehood issue since 1978. For some time, Mr. Phillips' group had a full-time staffer organizing opposition around the country on the issue. "A position for statehood is not going to be a winner in Republican circles," Mr. Phillips said. "I'm sure that when Pat Buchanan announces for the nomination, he will let it be known that he is paying close attention to that issue."

Mr. Phillips said he has just sent off a letter to Rep. Thomas Bliley, Virginia Republican, ranking minority member of the House D.C. Committee. In the letter, Mr. Phillips urged defeat of the Norton bill and said Congress could not reject the oversight authority on the federal city imposed by the framers of the Constitution.

"White House strategists, ever alert to the politically correct position, will no doubt take corrective action on this troubling retreat from the veto pledge," Mr. Phillips predicted.

In other reaction, Rep. Dana Rohrabacher, California Republican, continued his strong objections to the statehood effort. "If they want to vote for their own members of Congress, then D.C. should be ceded back to Maryland," he said. "Let 'em vote for Maryland's legislators. The argument that D.C. should be a state because it is larger than three existing states is ridiculous. I represent Los Angeles County, which is bigger than 42 states. We haven't pushed for statehood, but if it's right for D.C., then maybe we should advocate it for LA County."

## HELPING HAND

Thanks and a tip of the helmet to the Beltway Irregular and Capitol Hill staffer who spotted Rep. Neil Abercrombie, bearded Hawaii Democrat, in a recent confrontation with a tourist couple. Mr. Abercrombie, in casual attire, was standing on a sidewalk near the Capitol one recent evening when the out-of-towners approached. They eyed him and he apparently felt recognized,

so he walked over and put out his hand to greet them. The gent, who had heard about such people on the streets of Washington, reached in his pocket and popped a dollar bill into the congressman's outstretched palm.

"What is this?" Mr. Abercrombie demanded. Silence reigned. Then, realizing he had been mistaken for a bum, Mr. Abercrombie let the turistas know who he was and stormed angrily off into the encroaching gloom.

"Sounds weird to me. He didn't mention anything about it," a spokesman for Mr. Abercrombie said.

#### SECRET WEAPON

When you look at all the big guns that were lined up against David Duke, it's a wonder the guy got even 2 percent of the vote in Louisiana. In addition to a SWAT team rumored to have been sent in by the White House, Mr. Duke also faced fire from a gang of media wizards known as the "Independent Expenditure Guys."

Never heard of them? Sure you have, you just don't know it.

They're the same gang that cooked up the famous Willie Horton commercial that put a lid on the Massachusetts Miracle and became the most talked-about attack since Pearl Harbor.

They're also responsible for the "Who Will Judge the Judge?" commercial that slammed Ted Kennedy as unfit to participate in the nominating process for Justice Clarence Thomas.

So who are these guys? Larry McCarthy, GOP television guru; Craig Shirley, mastermind of numerous political and public relations campaigns; Tony Fabrizio, top Republican pollster and political consultant; and Floyd Brown, chairman of the Republican Challengers Committee.

The ad was paid for through a personal contribution from Ron Kanfer, president of Response Dynamics. So who's next in their sights? "Actually, we're hoping Cuomo runs for president," Mr. Shirley said. Why? "Because we'll hand him his lungs."

#### WHERE TO PUT HIM

President Bush, who's always laughed it off publicly when he gets stung by Garry Trudeau's "Doonesbury" comic strip, apparently can't laugh so easily at the current grilling his vice president is undergoing. Yesterday, in a teleconference with the Southern Newspaper Publishers Association, Mr. Bush offered a bit of advice on running newspapers. "I might start by recommending that you put Doonesbury in the obituary section," Mr. Bush said.

Mr. Trudeau's interest in drug issues dates at least to 1978, according to a Beltway Irregular who faxed us a news account from the time. The story notes that Mr. Trudeau contributed panels of his original "Doonesbury" cartoons to an auction held in support of the National Organization for the Reform of Marijuana Laws. The event was held on the lawn of Hugh Hefner's West Coast Playboy mansion.





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

Carol Darr  
Democratic National Committee  
430 South Capitol Street  
Washington, DC 20003

RE: MUR 3638

Dear Ms. Darr:

9604370906  
This letter acknowledges receipt on October 5, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Response Dynamics, Inc., Direct Response Data Management Service, American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design Inc., Mid-America Printing Co., Fulfillment Management Services, National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, the Republican Challengers Committee, and Robert E. Miller, Jr., as treasurer, Presidential Victory Committee and Robert Miller, as treasurer and Floyd Brown. 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 3638. 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 dark ink, appearing to read "Jonathan Bernstein", is written over the typed name.

Jonathan A. Bernstein  
Assistant General Counsel

Enclosure  
Procedures





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

Response Dynamics, Inc.  
Ronald Kanfer, President  
2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182

RE: MUR 3638

Dear Mr. Kanfer:

The Federal Election Commission received a complaint which indicates that Response Dynamics, Inc. ("Corporation") 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 3638. 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 Corporation 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.

9604370907

Response Dynamics, Inc.  
Ronald Kanfer, President  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

96043770908



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

Direct Response Data Management Service  
Roanld Kanfer, Vice President  
2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182

RE: MUR 3638

Dear Mr. Kanfer:

The Federal Election Commission received a complaint which indicates that Direct Response Data Management Service ("Company") 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 3638. 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 Company 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.

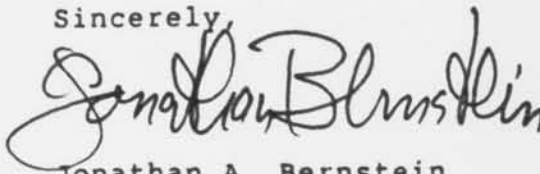
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9604370909

Direct Response Data Management Service  
Ronald Kanfer, Vice President  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

9604377091C



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

American Telephone Marketing Group, Inc.  
2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182

RE: MUR 3638

Dear Gentlemen:

The Federal Election Commission received a complaint which indicates that American Telephone Marketing Group, Inc. ("Corporation") 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 3638. 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 Corporation 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.

9604370911



American Telephone Marketing Group, Inc.  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

96043770912



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

The Best Lists, Inc.  
2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182

RE: MUR 3638

Dear Gentlemen:

The Federal Election Commission received a complaint which indicates that the Best Lists, Inc. ("Corporation") 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 3638. 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 Corporation 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.

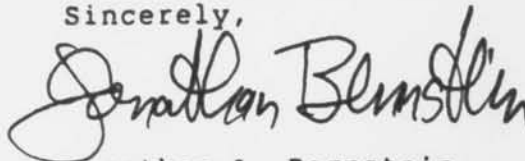
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9604370913

The Best Lists, Inc.  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

96043770914



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

American Graphic Design Inc.  
2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182

RE: MUR 3638

Dear Gentlemen:

The Federal Election Commission received a complaint which indicates that American Graphic Design Inc. ("Corporation") 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 3638. 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 Corporation 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.

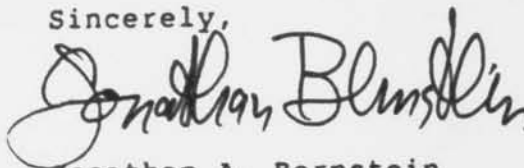
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

9604370915

American Graphic Design Inc.  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

9604370916





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

Fulfillment Management Services  
1150 International Pkwy  
Fredericksburg, VA 22405

RE: MUR 3638

Dear Gentlemen:

The Federal Election Commission received a complaint which indicates that Fulfillment Management Services ("Company") 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 3638. 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 Company 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.

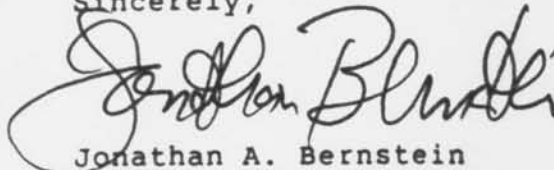
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

9604370917

Fulfillment Management Services  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

9604377918



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

Elizabeth I. Fediay, Treasurer  
National Security Political Action Committee  
3200 Morrison Street, NW  
Washington, DC 20015

RE: MUR 3638

Dear Ms. Fediay:

The Federal Election Commission received a complaint which indicates that the National Security Political Action 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 3638. 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.

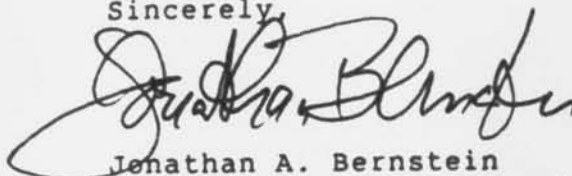
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9604370919

Elizabeth I. Fediay, Treasurer  
National Security Political Action Committee  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

9604370900



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 8, 1992

Presidential Victory Committee  
Robert Miller, Treasurer  
38 Ivy Street, SE  
Suite A  
Washington, DC 20003

RE: MUR 3638

Dear Mr. Miller:

The Federal Election Commission received a complaint which indicates that the Presidential Victory 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 3638. 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.

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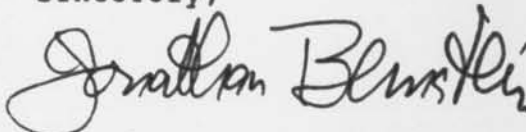
9604370921



Presidential Victory Committee  
Robert Miller, Treasurer  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

96043770922



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 8, 1992

Floyd Brown  
2020 Pennsylvania Avenue  
Suite 322  
Washington, DC 20006

RE: MUR 3638

Dear Mr. Brown:

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 3638. 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.

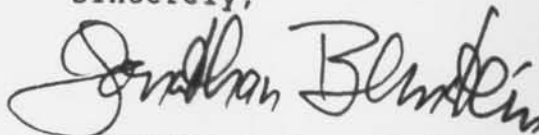
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2604370923

Floyd Brown  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

960437094



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 9, 1992

Robert E. Miller, Jr., Treasurer  
Republican Challengers Committee  
450 A Street, 2nd Floor  
San Diego, CA 92101

RE: MUR 3638

Dear Mr. Miller:

The Federal Election Commission received a complaint which indicates that the Republican Challengers 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 3638. 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.

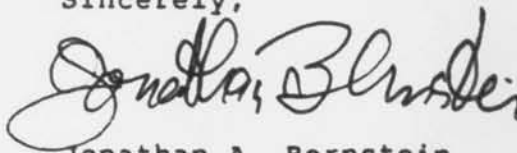
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

9604370925

Robert E. Miller, Jr., Treasurer  
Republican Challengers Committee  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

96043770926





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 9, 1992

Mid-America Printing Co.  
1150 International Pkwy.  
Fredericksburg, VA 22405

RE: MUR 3638

Dear Gentlemen:

The Federal Election Commission received a complaint which indicates that Mid-America Printing Co. ("Company") 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 3638. 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 Company 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.

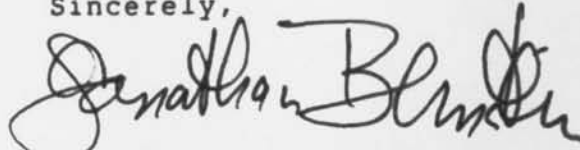
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

9604370927

Mid-America Printing Co.  
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein  
Assistant General Counsel

Enclosures

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

96043770928

OGC 7142

**WILLIAM J. OLSON, P.C.**

ATTORNEYS AT LAW

8180 GREENSBORO DRIVE, SUITE 1070  
MCLEAN, VIRGINIA 22102-3823

TELEPHONE (703) 356-5070

FAX (703) 356-5085

WILLIAM J. OLSON  
(D.C., VA.)  
JOHN S. MILES  
(D.C., MD., OF COUNSEL)  
GILMAN & PANGIA  
(OF COUNSEL)

1815 H STREET, N.W.  
SUITE 600  
WASHINGTON, D.C. 20006-3604  
TELEPHONE (202) 223-9066  
FAX (202) 331-8986

October 27, 1992

Hand Deliver

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

Attention: Jonathan A. Bernstein, Esquire  
Assistant General Counsel

Re: Presidential Victory Committee,  
Robert E. Miller, Jr.,  
Treasurer, et al.; MUR 3638

Dear Sir:

This firm represents Presidential Victory Committee ("PVC") and Robert E. Miller, Jr., as Treasurer of PVC (collectively referred to herein as "PVC Respondents"), in the above-referenced matter. By letters dated October 8, 1992, which we are advised were received by the PVC Respondents on or about October 12, 1992, you indicated that the Federal Election Commission ("FEC") had received a complaint indicating that the PVC Respondents may have violated the Federal Election Campaign Act of 1971 ("FECA"), and you invited their response within 15 days of receipt of your letters. Enclosed is the Statement of Designation of Counsel, signed by Robert E. Miller, Jr., as Treasurer for the Presidential Victory Committee, designating the undersigned as counsel in this matter, in accordance with your instructions.

We expect, in accordance with the law and your letter of October 8, 1992, that this matter will remain confidential, and we expressly request that it remain confidential.

This matter was instituted following the submission of a "Complaint" (dated October 2, 1992) by representatives of the Democratic National Committee ("DNC"). The Complaint directly accuses PVC of no wrongdoing whatsoever. PVC's name was not even included in the caption of the Complaint as a target of the DNC's charges, and there are no specific paragraphs of the Complaint alleging any violations of the Federal Election Campaign Act, or any other law, by PVC. Nevertheless, the Complaint references a prior DNC complaint claiming that PVC is affiliated with another

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committee, and the FEC sent the Complaint to the PVC Respondents for response.

With respect to the accusation that PVC is affiliated with another political committee, Republican Challengers Committee ("RCC"), this is the same allegation that was lodged against PVC in MUR 3578, to which PVC has already responded, through this office, in our letter of response dated September 2, 1992.

As we stated in our September 2, 1992, response, there is no affiliation between RCC and PVC, and we believe that the relevant FEC records indicate that RCC has been dormant and inoperative during the 1992 election cycle, and has acted only to report to the FEC and to attempt to retire its debt, which debt was incurred in connection with previous elections.

The affiliation charge is based upon the fact that RCC and PVC both have the same individual (Floyd Brown) as Chairman and employ the same individual (Robert E. Miller, Jr.) as Treasurer. But that does not establish affiliation. As we previously advised in our response in MUR 3578, Mr. Miller is an accountant who serves as Treasurer of several political committees that are not affiliates, and Mr. Brown is, and has been, involved with various organizations that are not affiliated. There is no bar against an individual being involved in two separate political committees. And this is particularly so where the two organizations are not involved at the same time in similar activity. Obviously, RCC and PVC are separate organizations, with separate legal existence, separate activities, and separate personnel, and the mere fact that the founder and treasurer of the two organizations are the same is not enough to cause the two organizations to be deemed affiliated.

Despite the identity of certain personnel in both PVC and RCC as alleged by the DNC, the two committees obviously were formed for different purposes during different time periods, and they should not be considered as "affiliated" within the intentment of the Regulations. Indeed, we submit that there are no reasonable grounds for any finding of affiliation. As the DNC undoubtedly realizes, RCC is de facto non-operational, except for its debt-retirement program.


We submit, as we stated in our response in MUR 3578, that an examination of the criteria set forth at 11 CFR section 110.5(g)(4)(ii), which the FEC would normally consider in determining whether affiliation between two organizations exists, fails to produce a single factor supporting the DNC's charge of affiliation between PVC and a dormant committee. The fact of the matter is that there is no affiliation between RCC and PVC, and the DNC's belief to the contrary is false.

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Our client would respectfully request that the Complaint be dismissed insofar as it is construed as involving an allegation against PVC, and that the DNC be discouraged from advancing any further repetitive matters in the future.

Thank you for your consideration of our position in this matter.

Sincerely yours,



William J. Olson

Enclosure  
WJO:mm

cc: Presidential Victory Committee

96043770931



STATEMENT OF DESIGNATION OF COUNSEL

MUR 3638

NAME OF COUNSEL: William J. Olson; John S. Miles

ADDRESS: William J. Olson, P.C.  
8180 Greensboro Drive, Suite 1070  
McLean, Virginia 22102-3823

TELEPHONE: ( 703 ) 356-5070

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.

October 23, 1992

Date

  
Signature

RESPONDENT'S NAME: Presidential Victory Committee

ADDRESS: 38 Ivy Street, S.E., Suite A  
Washington, D.C. 20003

TELEPHONE: HOME(        )                     

BUSINESS( 202 ) 546-1992

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OCT 28 11 23 AM '92

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3638

NAME OF COUNSEL: Paul E. Sullivan

ADDRESS: The Singletary Mansion

1565 The Alameda

San Jose, CA 95126

TELEPHONE: (408) 971-1340

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.

10/22/92

Date

Signature

RESPONDENT'S NAME: National Security PAC

ADDRESS: 3200 Morrison Street, NW

Washington, DC 20015

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

BUSINESS (202) 785-1935

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RECEIVED  
FEDERAL ELECTION COMMISSION

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OGC 7201

**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
FAX (202) 861-1783 • TELEX 2357276  
WRITER'S DIRECT DIAL NUMBER (202) 861-1531

October 29, 1992

**HAND DELIVERED**

Jonathan A. Bernstein  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Attention: Mr. Richard M. Zanfardino

Re: MUR 3638

Dear Mr. Bernstein:

MUR 3638: This office represents the following entities in

Response Dynamics, Inc.  
Direct Response Data Management Service  
American Telephone Marketing Group, Inc.  
The Best Lists, Inc.  
American Graphic Design, Inc.  
Mid-America Printing Co.  
Fulfillment Management Services, Inc.

Enclosed are the appropriate designation of counsel forms for each entity.

On behalf of the above-mentioned respondents, I request an extension of time to and including November 23, 1992 to respond to the Democratic National Committee's complaint.

Please advise me as soon as possible concerning the request for an extension of time.

Very truly yours,

*William H. Schweitzer*  
William H. Schweitzer

WHS/rch  
Enclosures (as noted)

92 OCT 29 PM 12:50

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3638

NAME OF COUNSEL: William H. Schweitzer  
E. Mark Braden

ADDRESS: Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

TELEPHONE: 202-861-1500

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

10-26-92  
Date

 ROI  
Signature

RESPONDENT'S NAME: Response Dynamics, Inc.

ADDRESS: 2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182

HOME TELEPHONE: \_\_\_\_\_

BUSINESS PHONE: 703-442-7595

96043370925

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3638

NAME OF COUNSEL: William H. Schweitzer  
E. Mark Braden  
ADDRESS: Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036  
TELEPHONE: 202-861-1500

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

10-26-92  
Date

  
Signature

RESPONDENT'S NAME: Direct Response Data Management Service  
ADDRESS: 2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182  
HOME TELEPHONE: \_\_\_\_\_  
BUSINESS PHONE: 703-442-7595

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**STATEMENT OF DESIGNATION OF COUNSEL**

MUR 3638

NAME OF COUNSEL: William H. Schweitzer  
E. Mark Braden

ADDRESS: Baker & Hostetler

1050 Connecticut Avenue, NW, Suite 1100

Washington, DC 20036

TELEPHONE: 202-861-1500

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

10-26-92  
Date

 , Atty  
Signature

RESPONDENT'S NAME: American Telephone Marketing Group, Inc.

ADDRESS: 2070 Chain Bridge Road

Suite 400

Vienna, VA 22182

HOME TELEPHONE: \_\_\_\_\_

BUSINESS PHONE: 703-442-7595

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**STATEMENT OF DESIGNATION OF COUNSEL**

MUR 3638

NAME OF COUNSEL: William H. Schweitzer  
E. Mark Braden

ADDRESS: Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

TELEPHONE: 202-861-1500

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

10-26-92  
Date

*[Signature]*  
Signature

RESPONDENT'S NAME: The Best Lists, Inc.

ADDRESS: 2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182

HOME TELEPHONE: \_\_\_\_\_

BUSINESS PHONE: 703-442-7595

9804370938

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3638

NAME OF COUNSEL: William H. Schweitzer  
E. Mark Braden  
ADDRESS: Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036  
TELEPHONE: 202-861-1500

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

10-26-92  
Date

 AEO  
Signature

RESPONDENT'S NAME: American Graphic Design Inc.  
ADDRESS: 2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182  
HOME TELEPHONE: \_\_\_\_\_  
BUSINESS PHONE: 703-442-7595

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3638

NAME OF COUNSEL: William H. Schweitzer  
E. Mark Braden

ADDRESS: Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

TELEPHONE: 202-861-1500

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

10-26-92  
Date

D. Miller, MS  
Signature

RESPONDENT'S NAME: Mid-America Printing Co.

ADDRESS: 1150 International Parkway  
Fredericksburg, VA 22405

HOME TELEPHONE: \_\_\_\_\_

BUSINESS PHONE: 703-752-2216

98043709

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3638

NAME OF COUNSEL: William H. Schweitzer  
E. Mark Braden  
ADDRESS: Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036  
TELEPHONE: 202-861-1500

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

10-26-92  
Date

*William H. Schweitzer*, fms  
Signature

RESPONDENT'S NAME: Fulfillment Management Services  
ADDRESS: 1150 International Parkway  
Fredericksburg, VA 22405  
HOME TELEPHONE: \_\_\_\_\_  
BUSINESS PHONE: 703-752-2216

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 2, 1992

William H. Schweitzer  
Baker & Hostetler  
Washington Square, Suite 1100  
1050 Connecticut Ave., NW  
Washington, D.C. 20036-5304

RE: MUR 3638  
Response Dynamics, Inc.,  
Direct Response Data  
Management Service, American  
Telephone Marketing Group,  
Inc., The Best Lists, Inc.,  
American Graphic Design,  
Inc., Mid-America Printing  
Co., Fulfillment Management  
Services, Inc.

Dear Mr. Schweitzer:

This is in response to your letter dated October 29, 1992, which we received on October 30, 1992, requesting an extension until November 23, 1992 to respond to the complaint 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 23, 1992.

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

Sincerely,

Richard M. Zanfardino  
Staff Member

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**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
FAX (202) 861-1783 • TELEX 2357276  
WRITER'S DIRECT DIAL NUMBER (202) 861-1504

November 23, 1992

**VIA HAND DELIVERY**

Jonathan Bernstein, Esquire  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Attention: Richard N. Zanferdino

Re: MUR 3638

Dear Mr. Bernstein:

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This letter is written in response to a letter from the Federal Election Commission, (the "Commission") dated October 8, 1992, to Response Dynamics, Inc. Direct Response Data Management Service, American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Inc., Mid-America Printing Company, and Fulfillment Management (collectively, the "Companies"). The letter included a Complaint from Complainant the Democratic National Committee ("Complainant") alleging that the Companies were in violation of the Federal Election Campaign Act of 1971, 2 U.S.C. § 431, et seq., as amended (the "Act"). Specifically, the Complaint charges that the Companies "have made illegal campaign contributions by extending commercially unreasonable credit, and forbearing from collecting debts owed to them by two political committees, the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC"), in violation of the Federal Election Campaign Act. . . ." See Complaint at 1 and 2.

The Commission should take no further action against the Companies in this matter. Enclosed with this letter are factual materials and legal arguments which demonstrate sufficient grounds for the Commission to terminate this matter promptly. The complaint has no merit. The Complaint is a cynical attempt to use

the Commission's enforcement process to chill potential political activity or political speech of individuals and political committees with which the Complainant is at odds. The Complainant is far too familiar with direct mail fundraising techniques and commercial business norms not to recognize that its allegations are groundless. The Commission should not further the Complainant's abuse of the enforcement process and should promptly dispose of this spurious Complaint.

#### Legal Standard

Neither the Commission's regulations nor the Act require that political committees be treated in commercial situations in other than a normal business manner. The Commission's regulations are quite specific. A corporation acting in its capacity as a commercial vendor may extend credit to a political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to those offered to nonpolitical debtors. 11 C.F.R. § 116.3(b). The Commission's regulations define the specific factors the Commission is to consider in determining whether a transaction involving credit was transacted in the ordinary course of business. The Commission will consider: (1) whether the commercial vendor followed its established procedures and past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c).

#### The Companies

The Companies are business enterprises, not political operations. The Companies employ approximately 200 people with an annual payroll of over \$3 million (see Attachment 1). RDI has earned a profit in every year of its operations since its incorporation. All stock of each of the Companies is owned by David A Kunko and Ronald A. Kanfer. Together the Companies offer a full range of fundraising services, including direct mail, telemarketing, mailing list brokerage, printing and inserting.

#### The Companies Meet The Act's Standards For Transactions Performed In The Ordinary Course of Business

The Companies will demonstrate that in each instance, the business relationship between the Companies and NSPAC met each of the standards set forth in the Commission's regulations. The Companies followed their established procedures and practices in

960437094

Jonathan Bernstein, Esquire  
November 23, 1992  
Page 3

determining to go forward with their business arrangements with NSPAC. In past dealings with principals of NSPAC, they had received prompt payment in full. The underlying agreement between the parties conformed to usual and normal practice in the industry. The contract was a pre-printed standard form agreement regularly used by the Companies. A copy of the contract is attached hereto as Attachment 2. The contract is substantially identical to contracts executed by all of the company's clients. Pursuant to the contract, NSPAC agreed to be billed at the Companies' standard rates. See Affidavit of Ronald A. Kanfer, ¶14. The contract also called for NSPAC to pay according to the Companies standard terms of payment. Id.

The Companies received prompt payment from NSPAC on its invoices through October 1988. In addition, the relationship between the Companies and NSPAC was an arm's-length commercial transaction that was a financial success for these Companies in spite of the currently outstanding debt.

Finally, the Act does not require a commercial vendor to conduct its business on a "cash-on-delivery" basis. The extension of credit by vendors in the areas of direct mail, telemarketing and printing to customers is a normal practice within the industry.

The Complainant provides the Commission with no specifics in support of its allegation that commercially unreasonable credit and forbearance in debt collection is present, other than the statement that "[t]he amount of these substantial debts is markedly disproportionate to the size of the vendors and the political committees involved." See Complaint at 2. The Complainant's own attachments show this assertion to be false. Complainant's Exhibit 2 shows that in the 1987/88 election cycle, NSPAC had receipts and expenditures of more than \$10.27 million. The outstanding present debt is certainly not disproportionate to the size of NSPAC and the Companies, especially since the vast majority of NSPAC's expenditures were received by these Companies. Again, Complainant's own exhibits state that NSPAC was the country's largest federal political action committee during the 1987/1988 election cycle, owing much of its success to the collection of contributions through these Companies. All assertions of disproportionality among the vendor, NSPAC and its debts simply are not borne out by the Complaint's exhibits. NSPAC's total unpaid debt to the Companies is approximately \$1.3 million, or less than 15% of gross income for the total project. NSPAC's debt to total income ratio for this project is better than the Companies' average client debt to total income ratio.



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The General Counsel in MUR 216/239(76) cited cases demonstrating "the unanimous decision of American courts" that courts will not intervene in business decisions motivated by a rational purpose and made in good faith. See Miller v. AT&T, 507 F.2d 759 (3d Cir. 1974); Bellis v. Thal, 373 F.Supp. 120 (D.C. Pa. 1974), aff'd, 510 F.2d 969 (3d Cir. 1975); Cummings v. United Artists Theatre Circuit, Inc., 204 A.2d 795 (Md. 1964). See also Panter v. Marshall Field & Co., 646 F.2d 271 (7th Cir. 1981). Surely no business purpose is more rational than the Companies' purpose in entering into a contractual relationship with NSPAC: the realization of profit. This relationship required the Companies to take the risk that they would be forced to write off a large debt if NSPAC became insolvent. The Companies were willing to take that risk in return for the possibility that they would realize significant profits from the contract. That the Companies' position was reasonable is borne out by the profits they ultimately did realize, profits that dramatically outweigh the loss resulting from the Companies' failure to collect the NSPAC debt. The Companies were willing to risk having to write off that debt because they reasonably believed that NSPAC's business was worth the risk. The Complainant has made no showing that the Companies acted with any motive other than a desire to earn a profit. The Companies have earned more net income from work performed on this one NSPAC account than any other account they have handled within the same time frame.

In addition to the fees they charge, the Companies co-own mailing lists created under their full-service agreements with clients. The NSPAC, Americans for Bush, mailing list continues to earn significant net dollars for the Companies and is expected to continue earning income over the next four years. List rental income earned from the Americans for Bush mailing list of 128,000 names and new accounts produced as a result of publicity over this project has more than offset all \$1.3 million owed to the Companies.

**The Companies Made Commercially  
Reasonable Attempts At Debt Collection**

Complainant alleges that the Companies have violated the Act by failing to make a commercially reasonable attempt to collect the debt owed by NSPAC. If a creditor fails to make a commercially reasonable attempt to collect a debt, a contribution will result. See 11 C.F. R. §100.7(a)(4). Complainant does not specify which commercially reasonable actions Response Dynamics has failed to take. However, by alleging that "Response Dynamics has filed suit



Jonathan Bernstein, Esquire  
November 23, 1992  
Page 5

against at least one other customer," the Complaint implies that Response Dynamics' violation of § 100.7(a)(4) lies in its failure to initiate a lawsuit against NSPAC. See Complaint at 7.

Under the Commission's regulations, such a lawsuit would be required only if commercially reasonable. Presumably, commercial reasonableness does not require a business to expend a substantial sum of money in pursuit of a debt that may not be possible to collect. However, to penalize Response Dynamics for its failure to bring legal action against NSPAC would impose precisely such a requirement. Because NSPAC is insolvent, any attempt by the Companies to collect the debt owed to them would likely be fruitless. To incur the cost of filing a lawsuit in attempting to collect the debt would be an exercise of poor business judgment rather than a commercially reasonable attempt. Therefore, Response Dynamics' failure to initiate legal proceedings against NSPAC cannot possibly violate § 100.7(a)(4).

Direct mail debts and the Companies' fees are generally paid from money raised through programs conducted by them on behalf of their client. The Companies vigorously pursue fundraising programs to enable their clients to pay all bills. When fundraising projects consistently lose money, the Companies may determine that it is not possible to net any additional money to pay bills and therefore they may decide to cease new work for a client rather than continue to lose money on additional mailings. If NSPAC could raise the funds to pay their debts, the Companies would certainly seek action by NSPAC. It is clear from the Companies' experience and expertise that such a fundraising effort would fail and further increase NSPAC's debt to the Companies.

#### Republican Challengers Committee ("RCC")

The Companies entered into a fundraising agreement with RCC on November 7, 1989. A standard pre-printed agreement was used and the Companies' fee was set at the standard rate of \$50.00 per thousand pieces mailed. After about a year of standard direct mail prospect package testing and remailings to active donors of RCC, the Companies determined that the project did not have the potential that the Companies originally hoped. Based on the results of all work performed by the Companies for RCC, the Companies made a business decision to temporarily reduce the level of mail volume until the political fundraising climate improved.

#### Conclusion

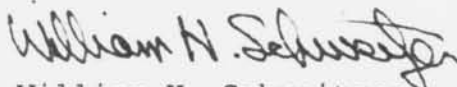
The Complainant fails to provide the Commission with any basis on which Commission should undertake any action other than

Jonathan Bernstein, Esquire  
November 23, 1992  
Page 6

closing its file in this matter. The complaint provides the Commission with no facts on which the Commission can find a reason to believe that the Companies have violated the Act. In reality, the Complainant's sole factual basis for the alleged violation is the size of the debt owned to the Companies. If significant debt obligations alone were sufficient for the Commission to find reason to believe a possible violation had occurred, then the General Counsel Office should be internally generating hundreds of matters under review. The Commission's record show hundreds of candidate committees and political committees with significant debt obligations.

If you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

  
William H. Schweitzer

  
E. Mark Braden

WHS:EMB:S:\JONATHAN.LTR

9604370918

# AGREEMENT

ATTACHMENT A

AGREEMENT made this 7th day of April, 1986, between Response Dynamics, Inc.,  
2070 Chain Bridge Road, Suite 380, Vienna, VA 22180 hereinafter called the Agency, and  
National Security Political Action Committee, 3200 Morrison Street, NW  
Washington, DC  
hereinafter called the Client.

WHEREAS, the Client is desirous of engaging the services of the Agency, it is agreed as follows:

1. **APPOINTMENT AND AUTHORIZATION OF AGENCY.** The Agency is hereby retained and appointed to represent exclusively the Client in carrying out its direct response fund raising program, and list rentals, subject to the terms and conditions of this Agreement. Direct response fund raising shall include direct mail, telephone and/or any advertising medium which generates a direct response.

2. **AGENCY SERVICES.** The Agency shall act as the Client's representative and perform, upon authorization hereby granted, any and all of the following services to the extent necessary to meet the Client's needs:

- Plan, create, write and prepare layouts and actual copy to be used in the Client's direct response fund raising program.
- Coordinate and develop the Client's direct response fund raising program.
- Enter into arrangements with the advertising media and others for space and time to effectuate the advertising and fund raising program as authorized by the Client.
- Negotiate, arrange and enter into agreements on behalf of the Client for any special material and talent required and for all photography, models, special effects, layouts, artwork, printing and any necessary technical material for use in the direct response fund raising and advertising program. The Agency shall have the right to select all vendors from which such services and/or materials shall be obtained.

3. **DIRECT MAIL, FUND RAISING AND ADVERTISING COSTS AND EXPENDITURES.**

- The Agency shall be reimbursed for all costs incurred and expenditures made for approved advertising.
- The Agency shall be reimbursed for the costs of packaging, shipping, taxes and duties, and telephone calls and telegrams incurred in connection with the performance of this Agreement.
- The Client shall pay all of the Agency's costs and any necessary traveling on its behalf other than to or from the main office of the Agency.

4. **AGENCY'S COMPENSATION.**

- The Agency shall receive compensation in the sum of Fifty Dollars (\$50.00) in \*\*50.00\*\* per one thousand (1,000) fund raising packages processed by the mailing house for mailing under the terms of this Agreement. A package shall include solicitation letter and other enclosures.
- The Agency shall receive compensation of 25% of the costs for solicitation by telephone. It is agreed that costs include charges for the telephone call vendor(s), telephone lines and followups by mailgram or similar devices.
- The Agency shall receive compensation in the sum of two dollars (\$2.00) per name for individually typed mailings to high dollar donors (fifty dollar (\$50.00) and up) in quantities of two thousand (2,000) or less.
- Agency compensation as enumerated in paragraphs a.s., d.b., and d.c., shall be subject to an adjustment at the beginning of each calendar year to an amount equal to the increase in the United States nationwide Consumer Price Index prepared by the United States Bureau of Labor Statistics, but shall in no event be less than the amounts set forth in said paragraphs.
- The Agency or its agent shall receive a commission of 20% of the standard list rental charge and/or exchanges made directly to organizations and a 40% commission on list rentals placed to other brokers or agencies, out of which the Agency will pay the other brokers' or agencies' fees. It is understood and agreed that The Best Lists, Inc. may at times serve as Agent for the Agency. The Agency shall place all list rental and other commissions monies in a special bank account from which commissions and list rental fees shall be paid immediately upon receipt.
- The Client recognizes that the Agency will incur costs in the development of a project and/or package. The Client does agree as part of the consideration for this Agreement, to pay the Agency the sum of twenty-five thousand dollars for termination of the Agreement prior to the expiration date set forth in Paragraph 7.a. as liquidated damages, and not as a penalty. This amount is fixed and agreed upon by and between the Client and the Agency because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Agency would sustain in such event. It is agreed that this sum shall be the amount of damages which the Client shall pay the Agency along with payment for services and commissions set forth in Paragraph 7.d.
- If this Agreement is terminated or expires and a direct mail package created by the Agency in its original or modified form is used thereafter by the Client, its affiliate or assigns, the Client hereby agrees to pay the Agency the sum of sixty-five dollars per thousand pieces mailed. The Client agrees that it will provide the Agency, upon request, the name and address of any party conducting mailings of such a package as well as a report on the quantity and dates of said mailings.

5. **BILLING AND PAYMENT.**

- The Agency shall render billings from time to time as necessary on its standard forms and they shall be paid no later than on the due date stated therein.
- All returns from any direct response fund raising program must be tabulated on forms supplied by the Agency and the forms transmitted to the Agency for analysis within seven (7) days of receipt of said returns by the Client.
- All returns generated from solicitations shall be directed to an independent third party (hereinafter called the "Escrowee") selected by the Agency and the Client. The Escrowee shall tabulate all returns, deposit all funds in an Escrow Fund, and shall disburse said returns to the direct mail suppliers for all bills outstanding prior to the transfer of funds to the Client. Disbursements from the Escrow Fund shall be upon the signature of the Escrowee. Authorizations shall be presented under the joint signatures of the Agency and the Client to the Escrowee, along with invoices of the Client's creditors related to this agreement, including invoices of the Agency, which the Escrowee shall immediately pay from the escrow Fund.
- The Agency is hereby irrevocably authorized to have Client list rental income received pursuant to Paragraph 4.a. applied directly to payment of outstanding invoices due the Agency and The Best Lists, Inc. if such invoices are thirty (30) days or more past due. The Client shall be notified in writing of any such transfer of list rental income by the issue of a "deduction" amount.
- If at any time invoices due a creditor(s) for services provided under this Agreement (including the Agency) remain unpaid ninety (90) or more days past the original invoice date, the Agency shall have the right to direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency for the purpose of tabulation, deposit and disbursement to the creditor(s). Disbursement from the Escrow Account shall be upon the signature of a representative designated by the Agency.
- It is understood and agreed that any funds advanced by the Agency for postage, telephone vendors and other direct response fund raising services or materials shall be immediately reimbursed the Agency before any returns are disbursed to the Client and/or other parties.

6. **CONFIDENTIALITY.** All financial information relating to these accounts, and this contract, shall be held in confidence by the Agency. Further, the Client shall hold in confidence all financial matters in connection with this contract, specifically including the Agency's compensation. It is agreed, however, that financial information can be provided by the Client to governmental agencies upon request of a formal request from a government entity. The Client shall immediately notify and provide the Agency a copy of any such formal request and the information provided by the Client.

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This Agreement shall become effective April 7, 1981 and shall continue in force for a period of 5 years unless sooner termination as provided herein. Unless terminated as herein provided, the Agreement shall be automatically renewed and extended under the same terms and conditions for successive two year periods.

- b. Either party may terminate this Agreement by giving the other party written notice of termination at least one hundred (100) days prior to the effective date of termination. Upon receipt of notice of termination, the Agency shall not commence any new work, but it shall complete all mailings and place all lists and advertisements previously approved. All other rights and duties of the parties shall continue during such a notice, and the Client or the Agency desires to terminate all work and contract obligation incurred with third parties. In the event the Client or the Agency desires to terminate all work and progress on direct mailing and advertisements commenced before the receipt of notice of termination, it may be so agreed upon the parties' mutual consent and the determination of compensation to be received by the Agency for partially completed work.
- c. Upon termination of this Agreement, the Agency shall assign to the Client all of its rights and contracts, agreements, arrangements or other transactions made with third parties for its account, effective on the date of termination or on such other date as may be agreed upon by the parties, and the Client shall assume all obligations and hold the Agency harmless for all liability thereunder. In the event any such contract is assignable and consent to assignment is refused, or the Agency cannot obtain a release from its obligations, the Agency shall continue to perform and the Client shall meet its obligations as though this Agreement has not been terminated.
- d. Upon termination of this Agreement, the Agency shall submit its billing for all amounts not previously billed and due the Agency at that time. The Agency shall not be entitled to commission or payment for any advertisement or direct list work it has undertaken if work performed thereon commenced after the date the notice of termination of this Agreement was received by the Agency. The Agency shall, however, be entitled to payment for services and commissions for advertisements and direct list mailings commenced and approved for placement in specific media or with a specific broker or agency prior to receipt of such notice, or with express written consent, prior to the effective date of termination.
- e. In the event a direct mail fund raising project and/or a package originated by the Agency is delayed in mailing for fifteen (15) days or more by directions or instructions of the Client, it is expressly agreed and understood that the project and/or package can, at the option of the Agency, be placed by the Agency with another party without any liability to the Client whatsoever. The Client hereby waives and releases any rights it may now or in the future have in or to said project and/or package. In the event of any exercise of this option by the Agency, the Client shall be responsible to the Agency for payment of any contract obligations previously incurred with third parties. The Agency shall be entitled to payment for services and commissions for work prior to the receipt by the Client of a notice of the exercise of this option.

8. **DISPOSITION OF PROPERTY AND MATERIALS.** Upon termination of this Agreement, all property and material produced and used under the Agreement shall be considered the property of the Agency until final payment of all invoices has been made by the Client. All shipping and transportation costs for said property shall be borne by the Client. These provisions shall apply whether the items in question are in the possession of the Agency or third parties. The Client hereby acknowledges the sole ownership by the Agency of any layouts, copy and artwork. The Client also acknowledges the co-ownership by the Agency of any and all lists created under this Agreement. The Client, its officers and/or representatives shall not during the term of this Agreement, or at any time subsequent thereto, rent, exchange, donate, sell or otherwise provide any list(s) created under this Agreement to any third party for any reason whatsoever without the prior written approval of the Agency. The Agency shall be entitled to unlimited use of the same both during the term of this Agreement and at all times subsequent thereto without any payment of any nature whatsoever by the Agency to the Client.

9. **ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Northern Virginia in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon award rendered by the arbitrators may be entered in any court of competent jurisdiction. In the event the Client has not paid invoices rendered by the Agency, list brokers and/or suppliers, the Client hereby further agrees that the Agency, list brokers and/or suppliers shall have the right to institute legal proceedings without first resorting to arbitration. The Client also agrees that such legal proceedings can be before a court in Northern Virginia and that such court shall have jurisdiction over the parties hereto.

10. **ASSIGNMENT AND DELEGATION.** Client may not assign any rights or delegate any duties hereunder without the prior written consent of the Agency. The Agency may assign its rights or delegate any duties hereunder including Agency's right to use any list created under this Agreement arising from the services performed under this Agreement.

11. **MODIFICATION.** This writing contains the entire Agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth. No agent, employee, or other representative of either party is empowered to alter any of the terms hereof, unless done in writing and signed by an executive officer of the respective parties.

12. **CONTROLLING LAW.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Virginia.

13. **WAIVER.** The failure of either party to this Agreement to object or to take affirmative action with respect to any conduct by the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach of subsequent wrongful conduct.

14. **CLAIMS.** The Client specifically agrees to hold the Agency harmless from any and all claims of third parties, of any nature whatsoever, arising out of materials, including copy, for direct response fund raising projects and/or packages reviewed and approved by the Client. In the event any payment due the Agency and/or direct response creditors is not made in accord with their terms of this Agreement and the obligation(s) is referred to any attorney for collection, the Client agrees to pay all costs of collections, including an attorney's fee of twenty percent of the sum due.

15. **CERTIFICATION.** The Client does hereby certify to the Agency that there is no agreement with another direct response fund raiser or list broker currently in existence or which will be in existence as of the effective date of this Agreement which conflicts with the terms hereof.

16. **NOTICES.** All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery or through the facilities of the United States Postal Service. The addresses set forth above for the respective parties shall be the places where notices shall be sent, unless written notice of a change of address is given.

17. **ADDITIONAL TERMS.**

The undersigned do hereby personally warrant and affirm that they are authorized to execute and bind the parties hereto.

ATTEST:

Corporate Secretary

ATTEST:

Corporate Secretary

Response Dynamics, Inc.

BY: President



# AGREEMENT

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AGREEMENT made this 7th day of November, 1989 between Response Dynamics, Inc., 2070 Chain Bridge Road, Suite 400, Vienna, VA 22180 hereinafter called the Agency, and The Republican Challengers Committee, 20241-194th Place, NE Woodinville, WA 98072 hereinafter called the Client.

WHEREAS, the Client is desirous of engaging the services of the Agency, it is agreed as follows:

1. **APPOINTMENT AND AUTHORIZATION OF AGENCY.** The Agency is hereby retained and appointed to represent exclusively the Client in carrying out its direct response fund raising program, and list rentals, subject to the terms and conditions of this Agreement. Direct response fund raising shall include direct mail, telephone and/or any advertising medium which generates a direct response.

2. **AGENCY SERVICES.** The Agency shall act as the Client's representative and perform, upon authorization hereby granted, any and all of the following services to the extent necessary to meet the Client's needs:

- Plan, create, write and prepare layouts and actual copy to be used in the Client's direct response fund raising program
- Coordinate and develop the Client's direct response fund raising program
- Enter into arrangements with the advertising media and others for space and time to effectuate the advertising and fund raising program as authorized by the Client.
- Negotiate, arrange and enter into agreements on behalf of the Client for any special material and talent required and for all photography, models, special effects, layouts, artwork, printing and any necessary technical material for use in the direct response fund raising and advertising program. The Agency shall have the right to select all vendors from which such services and/or materials shall be obtained.

## 3. **DIRECT MAIL, FUND RAISING AND ADVERTISING COSTS AND EXPENDITURES.**

- The Agency shall be reimbursed for all costs incurred and expenditures made for approved advertising.
- The Agency shall be reimbursed for the costs of packaging, shipping, taxes and duties, and telephone calls and telegrams incurred in connection with the performance of this Agreement.
- The Client shall pay all of the Agency's costs and any necessary traveling on its behalf other than to or from the main office of the Agency.

## 4. **AGENCY'S COMPENSATION**

- The Agency shall receive compensation in the sum of Fifty Dollars (\$ \*\*50.00\*\*) per one thousand (1,000) fund raising packages processed by the mailing house for mailing under the terms of this Agreement. A package shall include solicitation letter and other enclosures.
- The Agency shall receive compensation of 25% of the costs for solicitation by telephone. It is agreed that costs include charges for the telephone call vendor(s), telephone lines and followups by mailgram or similar devices.
- The Agency shall receive compensation in the sum of two dollars (\$2.00) per name for individually typed mailings to high dollar donors (fifty dollar (\$50.00) and up) in quantities of two thousand (2,000) or less.
- ~~Agency compensation as provided in paragraph 4.1, 4.2, and 4.3 shall be subject to adjustment at the beginning of each calendar year in an amount equal to the increase in the United States Bureau of Labor Statistics Consumer Price Index prepared by the United States Bureau of Labor Statistics, but shall in no event be less than the amounts set forth in said paragraph.~~
- ~~The Agency or its agent shall receive a commission of 30% of the standard list rental charge and/or enclosures made directly to organizations and a 40% commission on list rentals placed to other brokers or agencies, out of which the Agency will pay the other brokers' or agencies' fees. It is understood and agreed that The Best Lists, Inc. may at times serve as Agent for the Agency. The Agency shall place all list rental and other commissionable monies in a special bank account from which commissions and list rental fees shall be paid immediately upon receipt.~~
- The Client recognizes that the Agency will incur costs in the development of a project and/or package. The Client does agree, as part of the consideration for this Agreement, to pay the Agency the sum of twenty-five thousand dollars for termination of the Agreement prior to the expiration date set forth in Paragraph 7.5, as liquidated damages, and not as a penalty. This amount is fixed and agreed upon by and between the Client and the Agency because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Agency would sustain in such event. It is agreed that this sum shall be the amount of damages which the Client shall pay the Agency along with payment for services and commissions set forth in Paragraph 7.4.
- If this Agreement is terminated or expires and a direct mail package created by the Agency in its original or modified form is used thereafter by the Client, its affiliate or assigns, the Client hereby agrees to pay the Agency the sum of sixty-five dollars per thousand pieces mailed. The Client agrees that it will provide the Agency, upon request, the name and address of any party conducting mailings of such a package as well as a report on the quantity and dates of said mailings.

## 5. **BILLING AND PAYMENT**

- The Agency shall render billings from time to time as necessary on its standard forms and they shall be paid no later than on the due date stated therein.
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- All returns generated from solicitations shall be directed to an independent third party (hereinafter called the "Escrowee") selected by the Agency and the Client. The Escrowee shall tabulate all returns, deposit all funds in an Escrow Fund, and shall disburse said returns to the direct mail suppliers for all bills outstanding prior to the transfer of funds to the Client. Disbursements from the Escrow Fund shall be upon the signature of the Escrowee. Authorizations shall be presented under the joint signatures of the Agency and the Client to the Escrowee, along with invoices of the Client's creditors related to this agreement, including invoices of the Agency, which the Escrowee shall immediately pay from the escrow Fund.
- ~~The Agency is hereby irrevocably authorized to have Client list rental income retained pursuant to Paragraph 4.1 applied directly to payment of outstanding invoices due the Agency and The Best Lists, Inc. if such invoice is due thirty (30) days or more past due. The Client shall be notified in writing of any such transfer of list rental income by the issue of a~~
- If at any time invoices due a creditor(s) for services provided under this Agreement (including the Agency) remains unpaid thirty (30) or more days past the original invoice date, the Agency shall have the right to direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency for the purpose of tabulation, deposit and disbursement to the creditor(s). Disbursement from the Escrow Account shall be upon the signature of a representative designated by the Agency.
- It is understood and agreed that any funds advanced by the Agency for postage, telephone vendors and other direct response fund raising services or materials shall be immediately reimbursed the Agency before any returns are disbursed to the Client and/or other parties.

6. **CONFIDENTIALITY.** All financial information relating to these accounts, and this contract, shall be held in confidence by the Agency. Further, the Client shall hold in confidence all financial matters in connection with this contract, specifically including the Agency's compensation. It is agreed, however, that financial information can be provided by the Client to governmental agencies upon request of a formal request from a government entity. The Client shall immediately notify and provide the Agency a copy of any such formal request and the information provided by the Client.

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# 7. DURATION AND TERMINATION.

- a. This Agreement shall become effective November 7 19 89 and shall continue in force for a period of 2 years unless sooner termination as provided herein. Unless terminated as herein provided, the Agreement shall be automatically renewed and extended under the same terms and conditions for successive two year periods.
- b. Either party may terminate this Agreement by giving the other party written notice of termination at least one hundred sixty (60) days prior to the effective date of termination. Upon receipt of notice of termination, the Agency shall not commence any new work, but it shall complete all mailings and place all lists and advertisements previously approved. All other rights and duties of the parties shall continue during such a notice, and the Client or the Agency desires to terminate all work and contract obligation incurred with third parties. In the event the Client or the Agency desires to terminate all work and progress on direct mailing and advertisements commenced before the receipt of notice of termination, it may be so agreed upon the parties' mutual consent and the determination of compensation to be received by the Agency for partially completed work.
- c. Upon termination of this Agreement, the Agency shall assign to the Client all of its rights and contracts, agreements, arrangements or other transactions made with third parties for its account, effective on the date of termination or on such other date as may be agreed upon by the parties; and the Client shall assume all obligations and hold the Agency harmless for all liability thereunder. In the event any such contract is nonassignable and consent to assignment is refused, or the Agency cannot obtain a release from its obligations, the Agency shall continue to perform and the Client shall meet its obligations as though this Agreement has not been terminated.
- d. Upon termination of this Agreement, the Agency shall submit its billing for all amounts not previously billed and due the Agency at that time. The Agency shall not be entitled to commission or payment for any advertisement or direct list work it has undertaken if work performed thereon commenced after the date the notice of termination of this Agreement was ratified by the Agency. The Agency shall, however, be entitled to payment for services and commissions for advertisements and direct list placings commenced and approved for placement in specific media or with a specific broker or agency prior to receipt of such notice, or, with express written consent, prior to the effective date of termination.
- e. In the event a direct mail fund raising project and/or a package originated by the Agency is delayed in mailing for fifteen (15) days or more by directions or instructions of the Client, it is expressly agreed and understood that the project and/or package can, at the option of the Agency, be placed by the Agency with another party without any liability to the Client whatsoever. The Client hereby waives and releases any rights it may now or in the future have in or to said project and/or package. In the event of any exercise of this option by the Agency, the Client shall be responsible to the Agency the Agency for payment of any contract obligations previously incurred with third parties. The Agency shall be entitled to payment for services and commissions for work prior to the receipt by the Client of a notice of the exercise of this option.

8. DISPOSITION OF PROPERTY AND MATERIALS. Upon termination of this Agreement, all property and material produced and used under the Agreement shall be considered the property of the Agency until final payment of all invoices has been made by the Client. All shipping and transportation costs for said property shall be borne by the Client. These provisions shall apply whether the items in question are in the possession of the Agency or third parties. The Client hereby acknowledges the sole ownership by the Agency of any layouts, copy and artwork. ~~The Client also acknowledges the sole ownership by the Agency of any and all lists created under this Agreement. The Client to offices and/or representatives shall not during the term of this Agreement or at any time subsequent thereto, sell, exchange, donate, sell or otherwise provide any list(s) created under this Agreement to any third party for any reason whatsoever without the prior written approval of the Agency. The Agency shall be entitled to unlimited use of the same both during the term of this Agreement and at all times subsequent thereto without any payment of any nature whatsoever by the Agency to the Client.~~ to the other party.

9. ARBITRATION. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Northern Virginia in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon award rendered by the arbitrators may be entered in any court of competent jurisdiction. In the event the Client has not paid invoices rendered by the Agency, list brokers and/or suppliers, the Client hereby further agrees that the Agency, list brokers and/or suppliers shall have the right to institute legal proceedings without first resorting to arbitration. The Client also agrees that such legal proceedings can be before a court in Northern Virginia and that such court shall have jurisdiction over the parties hereto.

10. ASSIGNMENT AND DELEGATION. Client may not assign any rights or delegate any duties hereunder without the prior written consent of the Agency. The Agency may assign its rights or delegate any duties hereunder including Agency's right to use any list created under this Agreement arising from the services performed under this Agreement.

11. MODIFICATION. This writing contains the entire Agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth. No agent, employee, or other representative or either party is empowered to alter any of the terms hereof, unless done in writing and signed by an executive officer of the respective parties.

12. CONTROLLING LAW. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Virginia.

13. WAIVER. The failure of either party to this Agreement to object or to take affirmative action with respect to any conduct by the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach of subsequent wrongful conduct.

14. CLAIMS. The Client specifically agrees to hold the Agency harmless from any and all claims of third parties, of any nature whatsoever, arising out of materials, including copy, for direct response fund raising projects and/or packages reviewed and approved by the Client. ~~In the event any payment due the Agency and/or direct response providers is not made in accord with the terms of this Agreement and the obligation to referred to any attorney for collection, the Client agrees to pay all costs of collection including an attorney's fee of twenty percent of the sum due.~~

15. CERTIFICATION. The Client does hereby certify to the Agency that there is no agreement with another direct response fund raiser or list broker currently in existence or which will be in existence as of the effective date of this Agreement which conflicts with the terms hereof.

16. NOTICES. All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery or through the facilities of the United States Postal Service. The addresses set forth above for the respective parties shall be the places where notices shall be sent, unless written notice of a change of address is given.

## 17. ADDITIONAL TERMS

The undersigned do hereby personally warrant and affirm that they are authorized to execute and bind the parties hereto.

ATTEST

Corporate Secretary

ATTEST

Corporate Secretary

Republican Challengers Committee

By: Floyd H. Brown, Chairman

Response Dynamics, Inc.

BY

[Signature] President

RECEIVED  
FEDERAL ELECTRIC COMMISSION  
OFFICE OF THE SECRETARY

Attachment 1

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# TELEMARKETING

## OVERVIEW:

Response Dynamics is proud that its telemarketing affiliate, the American Telephone Marketing Group, Inc. (ATMG), is ranked in the top 40 of our nation's 200 ranked telemarketing firms.

American Telephone Marketing Group, Inc., headquartered in Fredericksburg, Virginia, offers results-oriented quality and performance. Whether it be lead generation, sales or fundraising ATMG has been built on a commitment to achieve the highest level of return for its clients.

## EXPERIENCE:

American Telephone Marketing Group is operated by seasoned telemarketing professionals with diverse background expertise in commercial and non-profit telemarketing. ATMG's operational structure has been designed to ensure tight management control. For every 12 Telemarketing Sales Reps., ATMG provides one senior supervisor to monitor performance levels and to ensure motivational strategies necessary to each project's success. Senior supervisors also provide daily training.

### Specialized Markets:

- \*BOC's - Telephone companies
- \*Credit Card insurance
- \*Financial Sales
- \*Lead Generation

- \*Fundraising
- \*Market Research
- \*Subscriptions

## CAPABILITY:

ATMG maintains 100 outbound workstations, 70% of which are on a full-time annual status. At optimal levels for high-volume callers, American Telephone Marketing Group can generate 3,000 hours of calling a week, 12,000 hours per month.

ATMG offers full service telemarketing, including: Scripting, tape conversions, 80% verification of all Sales calls within 30 minutes of the original contact; comprehensive, specialized training and monitoring capabilities for both client and operations staff.

### Hours of Operation:

\*Business to business - Monday through Friday  
9:00 AM to 4:00 PM

\*Business to consumer - Friday nights  
4:00 PM to 9:00 PM

\*Business to consumer - Monday through Thursday  
4:00 PM to MIDNIGHT

\*Business to consumer - Saturdays  
9:00 AM to 5:00 PM

### On-site Fulfillment services include:

- \*Invoicing
- \*Follow-up invoicing

1(800)444-1RDI  
444-1734

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# LISTS

## OVERVIEW:

The Best Lists, Inc., Response Dynamics' in-house list company, offers our clients complete list brokerage and list management services. Best Lists manages RDI's internal masterfile of 8 million names generated through many years of commercial and non-profit targeting. In addition brokerage services make thousands of lists accessible to fulfill the wide variety of direct response marketing and advertising requirements of our clients.

## EXPERIENCE:

The Best Lists, Inc., has over twenty years direct marketing experience. Our staff of dedicated professionals ensure that all client orders are processed accurately and promptly.

Our Best Lists professionals provide Response Dynamics' commercial clients with residential lists, business lists, and the full spectrum of specialty lists to meet specific needs.

## CAPABILITY:

From low-volume to high-volume orders, the list professionals at Best Lists can advise you on how to best reach your market with the targeting recommendations specifically tailored to your needs.

Our list services include, in part, selects based on:

- \*Geographical targets
- \*Income
- \*Occupation
- \*Age
- \*Sex
- \*Marital Status
- \*Home Ownership

For high-volume needs, specific data processing services are cost-effective. These services include:

- \*Merge/Purge
- \*Postal Qualification presorts and carrier route sorts

# DATA BASE MANAGEMENT

## OVERVIEW:

Response Dynamics' five data base management systems have been uniquely created to provide our clients with the most advanced computer applications and reporting systems available in the industry today through the 3090 120S IBM Mainframe.

Our full-time data base management staff includes two full-time computer systems programmers and a Senior Information Systems Manager. In addition, Response Dynamics has a full-time data entry staff who input data continuously at our eight terminals.

## EXPERIENCE:

Based on over 100 years of collective direct response marketing and advertising experience, Response Dynamics has developed and implemented five systems used to maintain our client data bases. Depending on your needs, Response Dynamics can use any of these systems to handle your database. We also provide customized database management systems for special needs.

Our five database management systems are overseen by experienced personnel who provide expertise in both mainframe and microcomputer technology and applications.

## CAPABILITY:

Response Dynamics' five data base management systems are supplemented by two on-line management systems which are the most innovative of all data base management systems available to keep your file up-to-date and clean. With our on-line systems your file can be updated in 10 seconds.

Included in the many data base management services Response Dynamics offers, a variety of reporting capabilities are available and include:

- \*File Management Updates
- \*Performance Analysis
- \*House Reports
- \*Prospect Reports
- \*Cost Analysis
- \*Response Tracking

Whether your data base consists of 5,000 to 5 million entries, in addition to our ability to maintain varied data in the most efficient and up-to-date manner, Response Dynamics also provides:

- \*Phone look-ups
- \*Demographic overlays
- \*Psychographic overlays
- \*List analyses
- \*Birthday appendages
- \*Source code analyses



# PRODUCTION

## OVERVIEW:

The Production Department of Response Dynamics specializes in maximizing your direct response marketing dollars by offering the full range of production services. In-house services include offset printing, laser printing, and full lettershop capabilities. In addition to the in-house services, Response Dynamics maintains consistent affiliations with a vast national network of top-of-the-line contractors to the direct response industry. This network provides maximum production flexibility and a variable pricing resource at your disposal.

## EXPERIENCE:

The lead production staff consists of seven account managers and two print buyers who work under the direction of senior production managers. The production staff coordinates and manages a total in-house production staff of 50 employed by Response Dynamics' sister companies, Direct Response Data Management, Inc., Fulfillment Management Services, Inc. and Mid-America Printing, Inc.

The production services of Response Dynamics have been structured to provide an optimal mailing capacity for low-volume mailers of less than 10,000 pieces and for high-volume mailers of more than 5 million pieces.

Specialized services include:

### Direct Response Data Management

- \*Our four Xerox 3700 laser printers offer the unique, high-quality ability of personalizing multiple sheets simultaneously.
- \*The Diablo and Datamarc autotyping systems ensure that match mailings are generated accurately with a personal touch.

### Fulfillment Management Services

- \*Specializes in personalized match mailings with fifty handworkers on-site for such uses as handaddressed envelopes, multiple live stamping, etc.
- \*Phillipsburg 10,000 insertors provide rapid, accurate package insertion to ensure that packages mail on time.

### Mid-America Printing

- \*Specifically established to handle quick turn around and surge capacity needs, MAP offers high-quality printing and high-volume through the Halm Superjet press.
- \*The Ryobi 3200CD's provide cost-effective, high-quality flatwork to meet the needs of variable volume mailers.

# CREATIVE: Copywriting and Art Design

## OVERVIEW:

The Creative Division of Response Dynamics, Inc., and its affiliated full-service studio, American Graphic Design, are industry recognized for their dynamic, innovative approaches to direct response marketing and advertising.

The creative capability of RDI has been carefully structured to provide all clients with aggressive talent that delivers winning copy and design for maximum response.

## EXPERTISE:

The Creative Division consists of ten full-time copywriters. American Graphic Design consists of three full-time design and mechanical artists.

The experience and expertise of the creative staff cover the full gamut of direct response marketing and advertising, both commercial and non-profit.

Areas of copywriting expertise include:

- \*Financial cross-sell marketing
- \*Airline frequent flyer programs
- \*Consumer insurance
- \*Fundraising
- \*Membership/Affinity programs
- \*Product/Service prospect offers
- \*Customer retention programs

Art design services include:

- \*Direct Mail
- \*Logo Design
- \*Letterheads
- \*Brochures
- \*Space Ads
- \*Print Ads
- \*Newsletters
- \*Annual Reports

## CAPABILITY:

In any one-month period, the creative staff writes and designs approximately 105 direct marketing packages, from postcards to sophisticated multi-insert laser personalized mailings. American Graphic Design generates all designs and mechanicals internally, utilizing computer-driven Itek PTW typesetting equipment with 86 typeface choices and the VGC Total Camera II.

# Experience the experience.

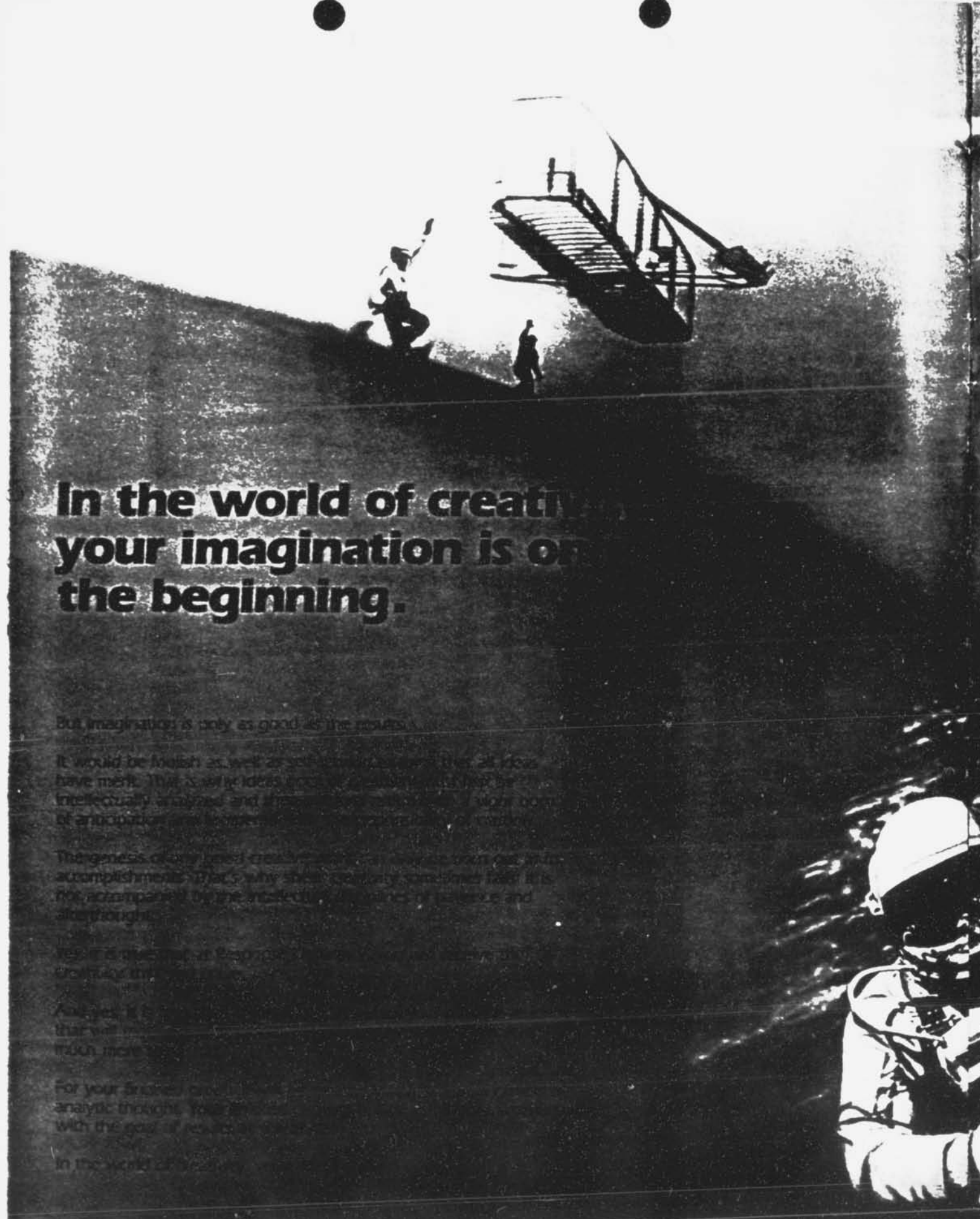


You have heard it all your life. There is no substitute for experience. And in direct response marketing, experience is vital.

For with experience there comes an undoubted real-world expertise to know what works and what doesn't, and quiet determination to provide the best possible product in the most efficient and least-costly manner.

Experience. There really isn't any substitute for it. Nor will there ever be.

Today, you are cordially invited to experience the experience of Response Dynamics and its family of companies at the front of direct response marketing.



## In the world of creative your imagination is on the beginning.

But imagination is only as good as the results.

It would be foolish as well as unrealistic to think all ideas have merit. That's why ideas need to be carefully and intellectually analyzed and then put to rest or put to work. Both of anticipation and imagination are essential to the creative process.

The genius of any great creative work is not just the idea, but the accomplishment. That's why some creative solutions fail. It's not accompanied by the intellect, the skill, or the resources and the thought.

And it is true that at the end of the day, the results are what count. It's not the idea that counts, it's the results.

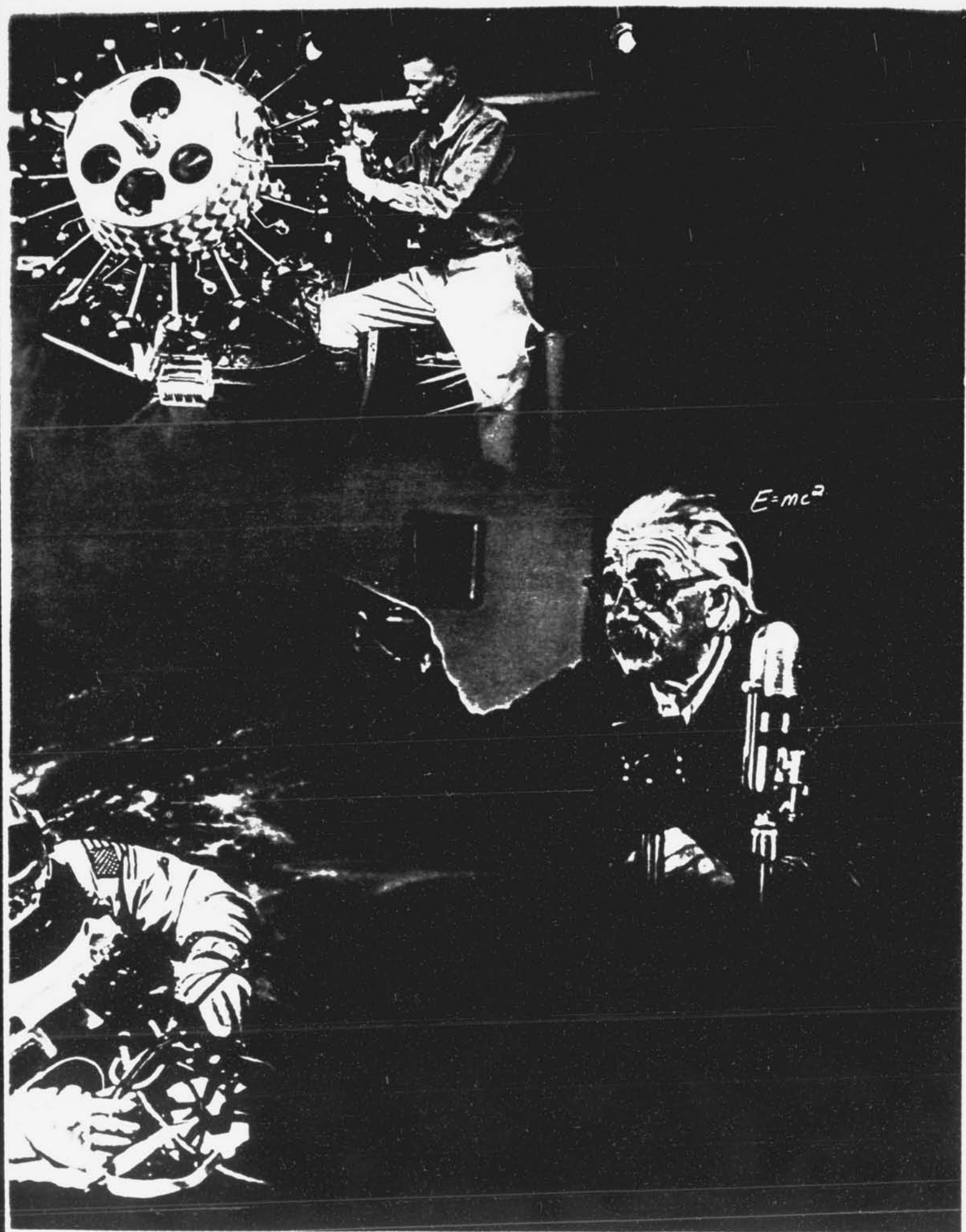
And yet it is  
that you must  
much more.

For your finished work is the result of  
analytic thought, not just imagination,  
with the goal of results.

In the world of creative









**The results  
you desire  
are the  
focal points  
of our expertise.**

All the companies that make up Response Dynamics operate on one principle: In direct response marketing, form must never overtake substance, wishful thinking must not override reality.

That is why Response Dynamics has pioneered new techniques in direct response marketing which are now industry standards.

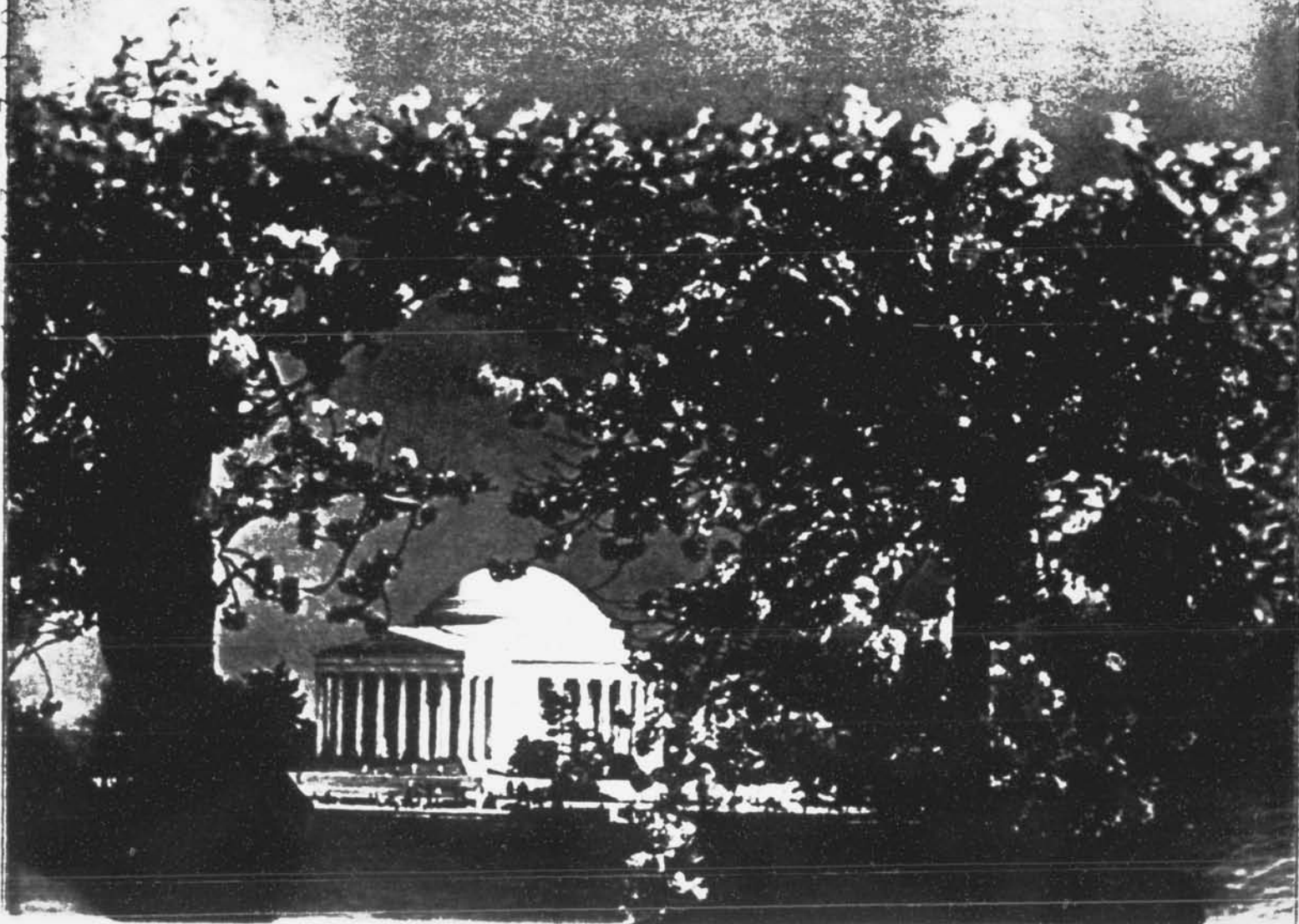
In the world of bank and financial marketing, our expertise has shown that you must know your integrity in the market place is paramount to your imaging position.

In the arena of political fundraising, our blockbuster successes have proven time and again that your message is what your contributor base supports.

In the delicate landscape of charitable giving, it is, has and will always be Response Dynamics that paints the image that is the acknowledged industry standard for donor response.

In the Darwinian sea of swashbuckling commercial advertising, we are proud to reaffirm to you our ethic that profit without honor is like life without meaning.

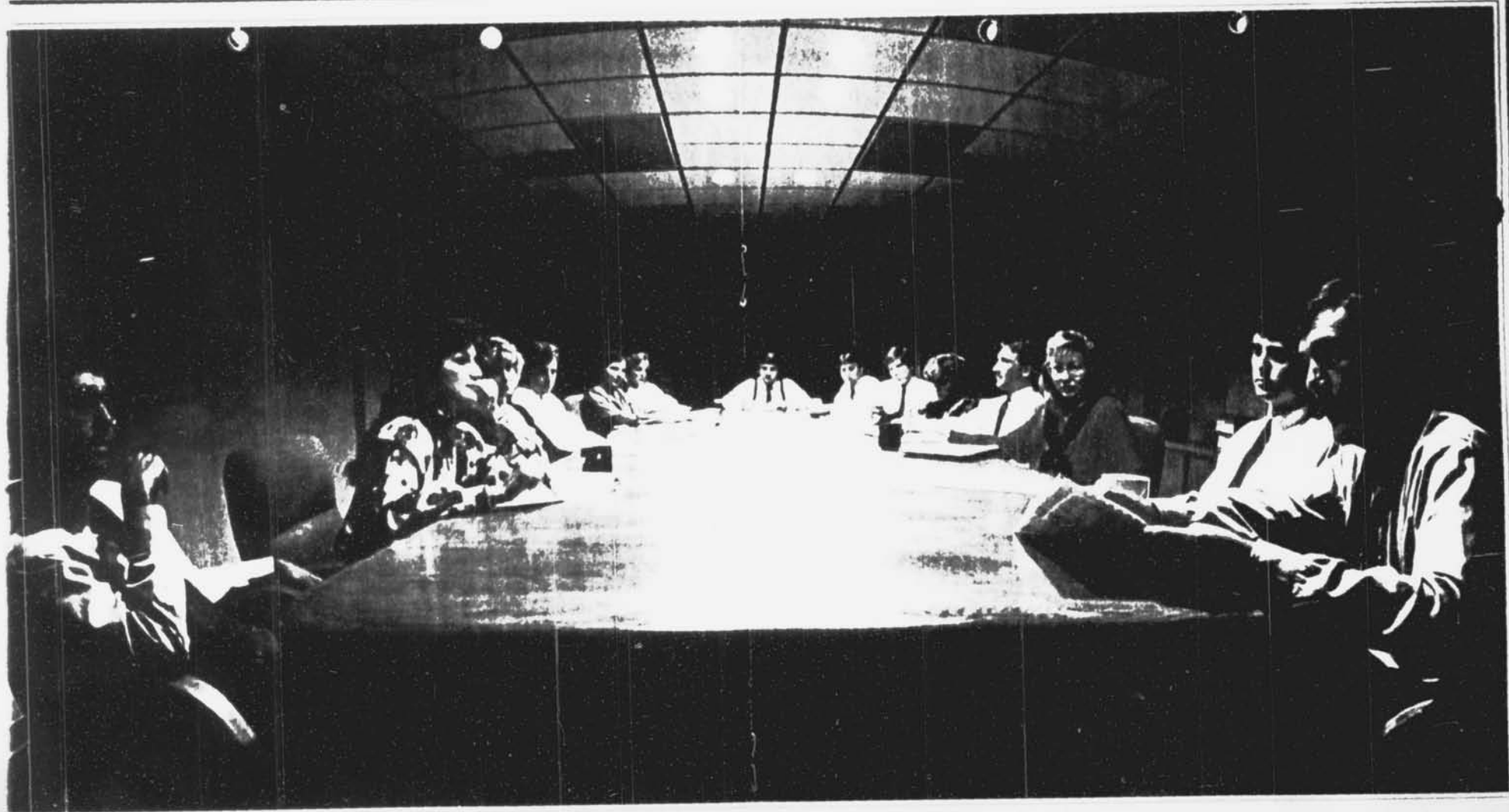
While others may promise, Response Dynamics delivers. For the results you desire are the focal points of our expertise.







9 6 0 4 3 7 7 0 9 6 4



**There can be no service  
without caring.  
There can be no results  
without mastering the details.**

Because you are the client, you are special. And at Response Dynamics, we have a very unique definition of the word special.

Special means caring about your budget as well as your integrity.

Special means caring about mastering every detail of your program so your results equal growth.

And special means the business of Response Dynamics: creativity

and full support services to make your vision and marketing objectives a reality.

All this can be accomplished because we know you are special and that you have special needs.

The power of detail and caring is our gift to you.

There can be no service without caring. There can be no results without mastering the details.

9 6 0 4 3 7 7 0 9 6 5

## A universe to discover.

Response Dynamics and its family of companies offer you the most advanced technology and expertise in direct response marketing today.

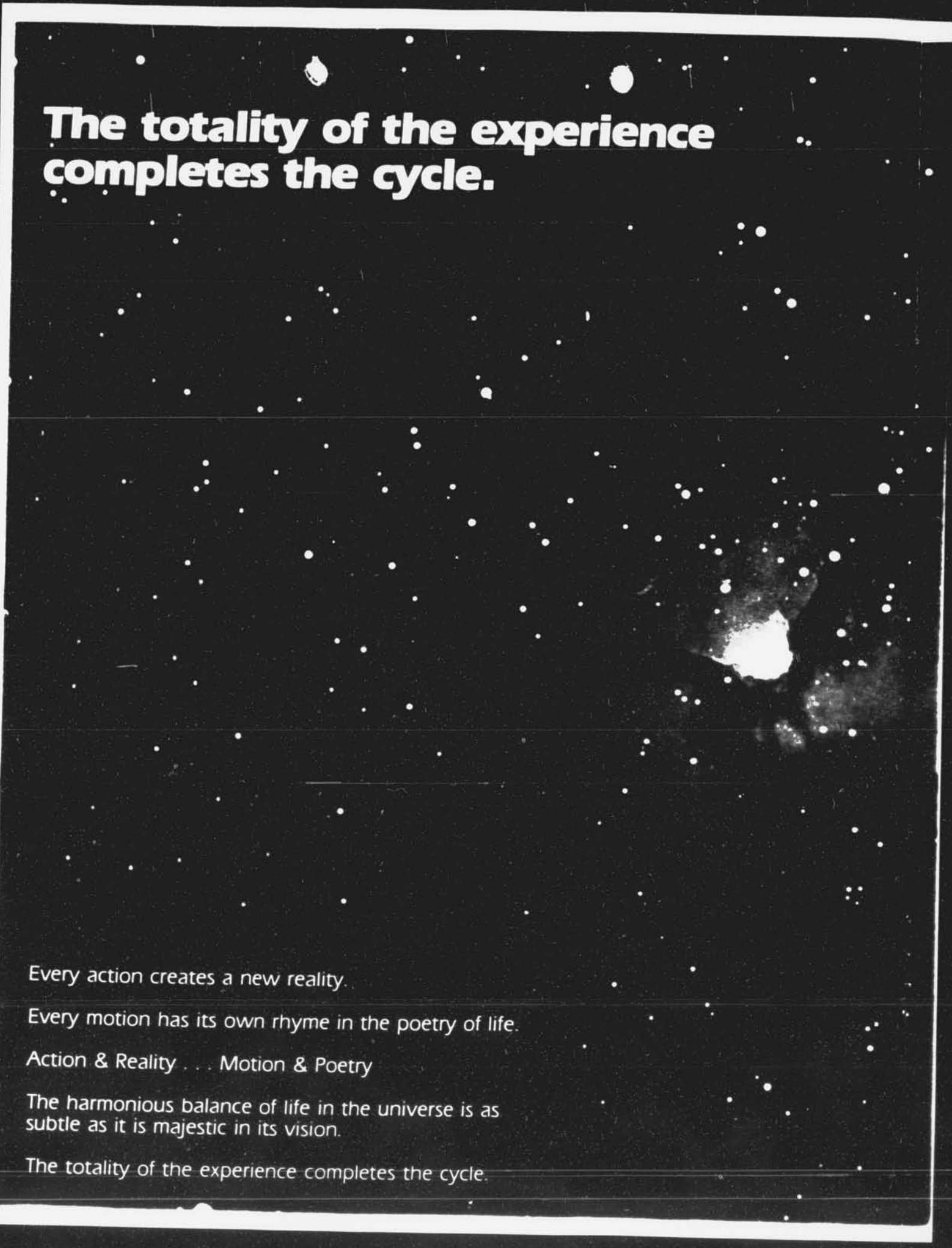
But beyond our expertise and technological applications, there is an entire galaxy of people who are Response Dynamics. Each one of our people is a stellar component, unique and integral to the totality of our services.

Copywriting. Art Design. Telemarketing. Production. Data Management. Fulfillment. Response Analysis. None of what we are able to achieve for our clients would be possible if we did not have the best direct response knowledgeable talent in the industry.

Response Dynamics. American Telephone Marketing Group. Best Lists. American Graphic Design. Mid America Printing. Direct Response Data Management. Telemarketing Results, Inc.

More than a constellation of companies. More than expertise, technology and service. We are a direct response marketing resource at your disposal. We are a universe for you to discover.





**The totality of the experience  
completes the cycle.**

Every action creates a new reality.

Every motion has its own rhyme in the poetry of life.

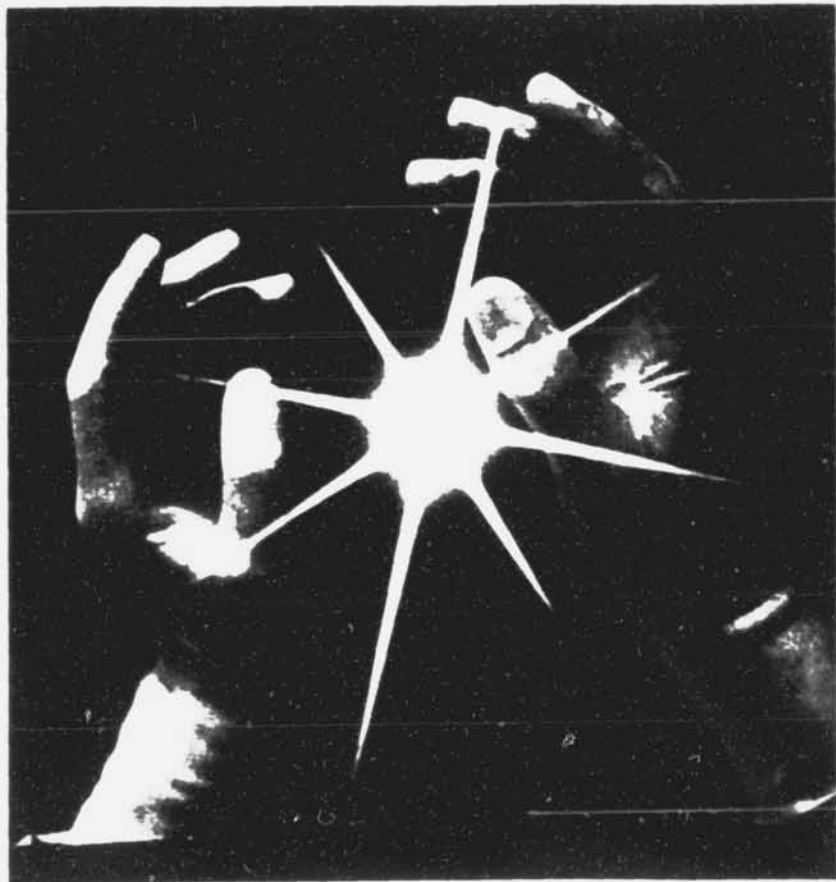
Action & Reality . . . Motion & Poetry

The harmonious balance of life in the universe is as  
subtle as it is majestic in its vision.

The totality of the experience completes the cycle.



# The last page. The final word. And yet the beginning.



If all the great ideas of mankind form a special symmetry with nature, so too do all the great emotions.

That is why in the constellation of Response Dynamics and its family of companies we emphasize unity through diversity.

The best creative ideas are useless without taking those creative ideas to their ultimate end: RESULTS.

The power of an idea illuminates a vision. Your company and organization are your vision revealed, but we believe that you are more than the sum total of your ideas.

At Response Dynamics, we specialize in making your

thoughts, vision, goals and your objectives a reality. For what you envision is the birth point of our creativity and inspiration.

Ideas. Effort. Response. These human characteristics form the quintessential aspects of all direct response marketing, but only when they are fused into a harmonious symmetry bonded in simplicity and coherence.

Imagination tempered by need. Creativity tempered by experience and expertise. These are the realities around which Response Dynamics revolves.

For you and your direct response marketing success, this is the last page. The final word. And yet... the beginning.

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between Response Dynamics, Inc.,  
hereinafter called the Agency, and  
\_\_\_\_\_  
hereinafter called the Client.

WHEREAS, the Client is desirous of engaging the services of the Agency, it is agreed as follows:

1. **APPOINTMENT AND AUTHORIZATION OF AGENCY.** The Agency is hereby retained and appointed to represent exclusively the Client in carrying out its direct response fund raising program, and list rentals, subject to the terms and conditions of this Agreement. Direct response fund raising shall include direct mail, telephone and/or any advertising medium which generates a direct response.

2. **AGENCY SERVICES.** The Agency shall act as the Client's representative and perform, upon authorization hereby granted, any and all of the following services to the extent necessary to meet the Client's needs:

- a. Plan, create, write and prepare layouts and actual copy to be used in the Client's direct response fund raising program.
- b. Coordinate and develop the Client's direct response fund raising program.
- c. Enter into arrangements with the advertising media and others for space and time to effectuate the advertising and fund raising program as authorized by the Client.
- d. Negotiate, arrange and enter into agreements on behalf of the Client for any special material and talent required and for all photography, models, special effects, layouts, artwork, printing and any necessary technical material for use in the direct response fund raising and advertising program. The Agency shall have the right to select all vendors from which such services and/or materials shall be obtained.

3. **DIRECT MAIL FUND RAISING AND ADVERTISING COSTS AND EXPENDITURES.**

- a. The Agency shall be reimbursed for all costs incurred and expenditures made for approved advertising.
- b. The Agency shall be reimbursed for the costs of packaging, shipping, taxes and duties, and telephone calls and telegrams incurred in connection with the performance of this Agreement.
- c. The Client shall pay all of the Agency's costs and any necessary traveling on its behalf other than to or from the main office of the Agency.

4. **AGENCY'S COMPENSATION.**

- a. The Agency shall receive compensation in the sum of \_\_\_\_\_ (\$\_\_\_\_\_) per one thousand (1,000) fund raising packages processed by the mailing house for mailing under the terms of this Agreement. A package shall include solicitation letter and other enclosures.
- b. The Agency shall receive compensation of 25% of the costs for solicitation by telephone. It is agreed that costs include charges for the telephone call, vendor(s), telephone lines and followups by mailgram or similar devices.
- c. The Agency shall receive compensation in the sum of two dollars (\$2.00) per name for individually typed mailings to high dollar donors (fifty dollar (\$50.00) and up) in quantities of two thousand (2,000) or less.
- d. Agency compensation as enumerated in paragraphs 4 a., 4 b. and 4 c. shall be subject to an adjustment at the beginning of each calendar year in an amount equal to the increase in the United States nationwide Consumer Price Index prepared by the United States Bureau of Labor Statistics, but shall in no event be less than the amounts set forth in said paragraphs.
- e. The Agency or its agent shall receive a commission of 20% of the standard list rental charge and/or exchanges made directly to organizations and a 40% commission on list rentals placed to other brokers or agencies, out of which the Agency will pay the other brokers or agencies' fees. It is understood and agreed that The Best Lists, Inc. may at times serve as Agent for the Agency. The Agency shall place all list rental and other commissionable monies in a special bank account from which commissions and list rental fees shall be paid immediately upon receipt.
- f. The Client recognizes that the Agency will incur costs in the development of a project and/or package. The Client does agree as part of the consideration for this Agreement, to pay the Agency the sum of twenty-five thousand dollars for termination of the Agreement prior to the expiration date set forth in Paragraph 7 a. as liquidated damages, and not as a penalty. This amount is fixed and agreed upon by and between the Client and the Agency because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Agency would sustain in such event. It is agreed that this sum shall be the amount of damages which the Client shall pay the Agency along with payment for services and commissions set forth in Paragraph 7 d.
- g. If this Agreement is terminated or expires and a direct mail package created by the Agency in its original or modified form is used thereafter by the Client, its affiliate or assigns, the Client hereby agrees to pay the Agency the sum of sixty-five dollars per thousand pieces mailed. The Client agrees that it will provide the Agency, upon request, the name and address of any party conducting mailings of such a package as well as a report on the quantity and dates of said mailings.

5. **BILLING AND PAYMENT.**

- a. The Agency shall render billings from time to time as necessary on its standard forms and they shall be paid no later than on the due date stated therein.
- b. All returns from any direct response fund raising program must be tabulated on forms supplied by the Agency and the forms transmitted to the Agency for analysis within seven (7) days of receipt of said returns by the Client.
- c. All returns generated from solicitations shall be directed to an independent third party (hereinafter called the "Escrowee") selected by the Agency and the Client. The Escrowee shall tabulate all returns, deposit all funds in an Escrow Fund, and shall disburse said returns to the direct mail suppliers for all bills outstanding prior to the transfer of funds to the Client. Disbursements from the Escrow Fund shall be upon the signature of the Escrowee. Authorizations shall be presented under the joint signatures of the Agency and the Client to the Escrowee, along with invoices of the Client's creditors related to this agreement, including invoices of the Agency, which the Escrowee shall immediately pay from the escrow Fund.
- d. The Agency is hereby irrevocably authorized to have Client list rental income received pursuant to Paragraph 4 a. applied directly to payment of outstanding invoices due the Agency and The Best Lists, Inc. if such invoices are thirty (30) days or more past due. The Client shall be notified in writing of any such transfer of list rental income by the issue of a check payable to an identical amount.
- e. If at any time invoices due a creditor(s) for services provided under this Agreement (including the Agency) remains unpaid thirty (30) or more days past the original invoice date, the Agency shall have the right to direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency for the purpose of tabulation, deposit and disbursement to the creditor(s). Disbursement from the Escrow Account shall be upon the signature of a representative designated by the Agency.
- f. It is understood and agreed that any funds advanced by the Agency for postage, telephone vendors and other direct response fund raising services or materials shall be immediately reimbursed the Agency before any returns are disbursed to the Client and/or other parties.

6. **CONFIDENTIALITY.** All financial information relating to these accounts, and this contract, shall be held in confidence by the Agency. Further, the Client shall hold in confidence all financial matters in connection with this contract, specifically including the Agency's compensation. It is agreed, however, that financial information can be provided by the Client to governmental agencies upon request of a formal request from a government entity. The Client shall immediately notify and provide the Agency a copy of any such formal request and the information provided by the Client.

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# DURATION AND TERMINATION.

- a. This Agreement shall become effective \_\_\_\_\_ 19\_\_\_\_ and shall continue in force for a period of \_\_\_\_\_ unless sooner termination as provided herein. Unless terminated as herein provided, the Agreement shall be automatically renewed and extended under the same terms and conditions for successive two year periods.
- b. Either party may terminate this Agreement by giving the other party written notice of termination at least one hundred fifty (150) days prior to the effective date of termination. Upon receipt of notice of termination, the Agency shall not commence any new work, but it shall complete all mailings and place all lists and advertisements previously approved. All other rights and duties of the parties shall continue during such a notice, and the Client or the Agency desires to terminate all work and contract obligation incurred with third parties. In the event the Client or the Agency desires to terminate all work and progress on direct mailing and advertisements commenced before the receipt of notice of termination, it may be so agreed upon the parties' mutual consent and the determination of compensation to be received by the Agency for partially completed work.
- c. Upon termination of this Agreement, the Agency shall assign to the Client all of its rights and contracts, agreements, arrangements or other transactions made with third parties for its account, effective on the date of termination or on such other date as may be agreed upon by the parties; and the Client shall assume all obligations and hold the Agency harmless for all liability thereunder. In the event any such contract is nonassignable and consent to assignment is refused, or the Agency cannot obtain a release from its obligations, the Agency shall continue to perform and the Client shall meet its obligations as though this Agreement has not been terminated.
- d. Upon termination of this Agreement, the Agency shall submit its billing for all amounts not previously billed and due the Agency at that time. The Agency shall not be entitled to commission or payment for any advertisement or direct list work it has undertaken if work performed thereon commenced after the date the notice of termination of this Agreement was ratified by the Agency. The Agency shall, however, be entitled to payment for services and commissions for advertisements and direct list placings commenced and approved for placement in specific media or with a specific broker or agency prior to receipt of such notice, or, with express written consent, prior to the effective date of termination.
- e. In the event a direct mail fund raising project and/or a package originated by the Agency is delayed in mailing for fifteen (15) days or more by directions or instructions of the Client, it is expressly agreed and understood that the project and/or package can, at the option of the Agency, be placed by the Agency with another party without any liability to the Client whatsoever. The Client hereby waives and releases any rights it may now or in the future have in or to said project and/or package. In the event of any exercise of this option by the Agency, the Client shall be responsible to the Agency the Agency for payment of any contract obligations previously incurred with third parties. The Agency shall be entitled to payment for services and commissions for work prior to the receipt by the Client of a notice of the exercise of this option.

8. **DISPOSITION OF PROPERTY AND MATERIALS.** Upon termination of this Agreement, all property and material produced and used under the Agreement shall be considered the property of the Agency until final payment of all invoices has been made by the Client. All shipping and transportation costs for said property shall be borne by the Client. These provisions shall apply whether the items in question are in the possession of the Agency or third parties. The Client hereby acknowledges the sole ownership by the Agency of any layouts, copy and artwork. The Client also acknowledges the co-ownership by the Agency of any and all list(s) created under this Agreement. The Client, its officers and/or representatives shall not during the term of this Agreement, or at any time subsequent thereto, rent, exchange, donate, sell or otherwise provide any list(s) created under this Agreement to any third party for any reason whatsoever without the prior written approval of the Agency. The Agency shall be entitled to unlimited use of the same both during the term of this Agreement and at all times subsequent thereto without any payment of any nature whatsoever by the Agency to the Client.

9. **ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Northern Virginia in accordance with the rules then obtaining of the American Arbitration Association and judgment upon award rendered by the arbitrators may be entered in any court of competent jurisdiction. In the event the Client has not paid invoices rendered by the Agency, list brokers and/or suppliers, the Client hereby further agrees that the Agency, list brokers and/or suppliers shall have the right to institute legal proceedings without first resorting to arbitration. The Client also agrees that such legal proceedings can be before a court in Northern Virginia and that such court shall have jurisdiction over the parties hereto.

10. **ASSIGNMENT AND DELEGATION.** Client may not assign any rights or delegate any duties hereunder without the prior written consent of the Agency. The Agency may assign its rights or delegate any duties hereunder including Agency's right to use any list created under this Agreement arising from the services performed under this Agreement.

11. **MODIFICATION.** This writing contains the entire Agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth. No agent, employee or other representative of either party is empowered to alter any of the terms hereof, unless done in writing and signed by an executive officer of the respective parties.

12. **CONTROLLING LAW.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Virginia.

13. **WAIVER.** The failure of either party to this Agreement to object or to take affirmative action with respect to any conduct by the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach of subsequent wrongful conduct.

14. **CLAIMS.** The Client specifically agrees to hold the Agency harmless from any and all claims of third parties, of any nature whatsoever, arising out of materials, including copy, for direct response fund raising projects and/or packages reviewed and approved by the Client. In the event any payment due the Agency and/or direct response creditors is not made in accord with their terms of this Agreement and the obligation(s) is referred to any attorney for collection, the Client agrees to pay all costs of collections, including an attorney's fee of twenty percent of the sum due.

15. **CERTIFICATION.** The Client does hereby certify to the Agency that there is no agreement with another direct response fund raiser or list broker currently in existence or which will be in existence as of the effective date of this Agreement which conflicts with the terms hereof.

16. **NOTICES.** All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery or through the facilities of the United States Postal Service. The addresses set forth above for the respective parties shall be the places where notices shall be sent, unless written notice of a change of address is given.

## 17. ADDITIONAL TERMS

The undersigned do hereby personally warrant and affirm that they are authorized to execute and bind the parties hereto.

ATTEST

Corporate Secretary

ATTEST

Corporate Secretary

Response Dynamics, Inc.

BY

President

# AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1992, between RESPONSE DYNAMICS, INC., 2070 Chain Bridge Road, Suite 400, Vienna, Virginia, 22182, (hereinafter referred to as "AGENCY"), \_\_\_\_\_ (hereinafter referred to as "CLIENT"). Said expressions to include the respective party's successors and assigns.

WHEREAS, the parties hereto are desirous of entering into an agreement, whereby the AGENCY would participate with the CLIENT in a full service development project, that would include strategic planning and program management.

## WITNESSETH:

For and in consideration of the mutual covenants herein contained the sufficiency which is acknowledged as evidenced by the signatures of the parties hereto, it is mutually agreed as follows:

1. APPOINTMENT OF AGENCY. The Client does hereby appoint and retain the AGENCY, on an exclusive basis to assist the CLIENT in carrying out its appeals for support from and education of the public.

- A. This appointment is on an exclusive basis, and shall not be limited in any way to the use of any particular medium.
- B. It is contemplated that as a result of this appointment, the AGENCY will conduct research and prepare various projects in proposal form for the CLIENT'S approval.
- C. The CLIENT agrees to provide background and information, and to participate as may be appropriate in the creation and review of proposals. The CLIENT shall designate, in writing, the individual(s) who shall have authority to approve the various projects.
- D. The CLIENT agrees throughout the term of this agreement not to use any other source or firm for the purposes of appealing for financial support, unless same shall first be authorized in writing by the AGENCY.

2. AGENCY SERVICES. The AGENCY agrees to conduct research, and design and develop materials for use by the CLIENT in appeals, using all available means of medium. These appeals shall be designed to educate, enhance the name recognition of, and solicit support for the CLIENT.

- A. The AGENCY shall oversee and coordinate on behalf of the CLIENT both the creative and technical aspects needed to complete a suitable appeal.
- B. The AGENCY shall be authorized to use affiliated sources, as well as independent vendors in creating projects for approval by the CLIENT.
- C. The AGENCY agrees to oversee, with CLIENT approval, the implementation of each approved project.
- D. The AGENCY agrees to use a competitive bid process, where practical, and when using affiliated companies, to secure charges that are reasonable and standard for said services.

3. TERM. This Agreement shall be for a primary term of two years commencing with date of execution. This Agreement shall automatically be extended for an additional term of two (2) years under the same terms and conditions hereof, unless either party gives notice to the other in writing of its desire to terminate, which shall be no less than sixty (60) days prior to the expiration of the primary term.

4. CLIENT RESPONSIBILITIES. All materials used, copied and created, and expenses incurred, shall be subject to the review and approval of the CLIENT. Once reviewed and approved, the CLIENT assumes full responsibility for same.

- A. The parties acknowledge and agree that the CLIENT is in a unique position, relative to knowledge of the program service and function of the CLIENT, and the area of concern for the CLIENT'S appeal. Therefore, the AGENCY will rely on the good faith of the CLIENT in reviewing all materials with reference to representations and the like for the accuracy of the statements contained therein.
- B. Once materials have been reviewed and approved for accuracy, the CLIENT agrees to be solely responsible for same, and to hold the AGENCY harmless from any claim arising therefrom.
- C. All expenses incurred, once approved, shall become the sole responsibility of the CLIENT.

5. ALLOCATION OF EXPENSES. The parties acknowledge and agree that a material element of the CLIENT'S inducement to enter into this Agreement, is the opportunity to combine functions, to-wit: program service, public education and advocacy, with the appeal for support in the various projects that will be created by the AGENCY.

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- A. The CLIENT shall be authorized to make said allocations all in accordance with Statement of Position Paper No. 87-2 issued by the AICPA.
  - B. To the extent it may be appropriate, the accountant of the client shall be given access to records or materials as may be reasonably required to make said allocations.
  - C. The AGENCY agrees to structure appeals in such a way as to combine said functions where appropriate and applicable.

6. AFFILIATED COMPANIES. The CLIENT acknowledges that the AGENCY had disclosed its affiliation with certain companies which may act from time to time, as vendors, materialmen or suppliers in the various projects that are created and recommended by the AGENCY. These affiliated companies are: Best Lists, Inc., Direct Response Data Management, Inc., Fulfillment Management Services, Inc., and Mid America Printing, Inc. The AGENCY agrees that all charges made by the affiliated companies, when used, shall be at the fair market value charged for comparable services from other companies. The CLIENT reserves the right to refuse the service of any affiliated company, provided the CLIENT replace same with a vendor of comparable quality and equal or less pricing.

7. LIST FUNCTIONS. The CLIENT agrees that all list brokerage services used will be provided by Best Lists, Inc., which shall receive fair market compensation for said services.

- A. It is further agreed that the AGENCY may, from time to time, use lists owned by Best Lists, Inc., which shall be compensated for same at the market rate.
- B. In the event that jointly owned names shall be used and exchanged, the CLIENT agrees to be billed at the rate of one and one half cents (\$0.015) for each name used in the transaction.

8. COMPENSATION OF AGENCY. Each of the parties acknowledge that the AGENCY will be providing a wide range of services in the nature of research, testing, strategic planning and program management, all of which shall be compensable.

- A. Direct mail shall be compensated at the rate of fifty dollars (\$50.00) per one thousand (1,000) fund raising requests posted.
- B. Telemarketing shall be compensated on an hourly basis, per line hour, at rates agreed to from time to time throughout this Agreement.
- C. The above-noted charges shall include compensation for research and preparation by the AGENCY, but shall be separate and apart from expenses incurred with affiliated and non-affiliated vendors.

9. ESCROW. The Client agrees to enter into a caging and escrow agreement with an independent, suitable firm.

- A. The escrow agreement shall incorporate the terms of this Agreement, where applicable.
- B. The escrow agreement shall provide for payment of obligations in the following order:
  - (i) Expenses advanced by AGENCY;
  - (ii) Postage;
  - (iii) Fees of AGENCY;
  - (iv) Fees of affiliated companies (as set forth in paragraph 6);
  - (v) Fees of third party vendors; and
  - (vi) CLIENT.
- C. The escrow agreement shall be subject to the approval of the AGENCY. Consent shall not be unreasonably withheld.
- D. All invoices shall first be reviewed by the AGENCY. Those recommended for payment shall be provided to CLIENT. The CLIENT agrees to promptly review same for approval and deliver to the escrow with instructions for payment.

10. RESPONSIBILITY FOR PAYMENT OF OBLIGATIONS. The CLIENT assumes full responsibility for the payment of all vendor suppliers and AGENCY invoices that are reasonable and proper arising out of the fulfillment of this Agreement.

11. FINANCIAL RECORDS. The AGENCY and CLIENT each shall be entitled to inspect any and all financial records of the other with respect to receipts and disbursements relating to this Agreement, and to do so at such reasonable times as either party may, from time to time, request.

12. LIST OWNERSHIP. The parties acknowledge that throughout the term of this Agreement and any extension hereof, that the parties will be engaged in donor acquisition and donor renewal, and it is contemplated that substantial new donors will be acquired.

- A. Any donor file contributed by CLIENT shall remain the sole and exclusive property of the CLIENT.





21. AUTHORIZATION. The CLIENT'S representative herein does expressly warrant that this Agreement has been reviewed by the organization, and that the signature hereon has been fully authorized for entry into this Agreement.

22. ADDENDUMS. The parties herein acknowledge and agree that certain terms and conditions may be required to be added to this Agreement by addendum. Each addendum shall be in a format which provides for the date of execution of same; the reference to this Agreement; and provide for signatures of the respective party's duly authorized representatives.

- A. Various matters of compensation dealing with services shall be a proper subject matter, if necessary, to any addendum.
- B. The parties herein acknowledge and agree that certain state laws may mandate that additional terms, not generally specified herein, shall be included and made a part hereof. To the extent of addendums to incorporate various state law provisions are required, they shall be executed and applicable to those states.

IN WITNESS WHEREOF, the parties to this Agreement have affixed their hands seal on the day and year first above written.

RESPONSE DYNAMICS, INC.

By \_\_\_\_\_  
Authorized Representative  
"AGENCY"

By \_\_\_\_\_  
Authorized Representative  
"CLIENT"

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April 28, 1986

Miss Lilly Pedlay  
Secretary-Treasurer  
National Security Political Action Committee  
3200 Morrison Street, Northwest  
Washington, D.C. 20036-15

Reply to:

Dear Lilly:

Pursuant to our discussions with your office on a telephone fund raising program for the National Security Political Action Committee (NSPAC), the American Telephone Marketing Group, Inc. (ATMG) proposes the following:

1. The first list to be used for the test shall be the \$25up Defense Select from The RDI Political File, hereinafter referred to as cells.
2. NSPAC understands that the Best Lists, Inc. (BLI) shall serve as agent for ATMG in acquiring calling lists on behalf of NSPAC. NSPAC also appoints BLI as its agent in such transactions.
3. The program shall commence on approximately Saturday, May 3rd.
4. An independent third party "Escrowee" shall be employed. The escrowee shall tabulate all returns, deposit all funds in an Escrow Fund, and shall disburse said returns to the related suppliers for all bills outstanding prior to transfer of funds to Client.
5. ATMG shall use Metromail for telephone number acquisition, where necessary. The fees of Metromail shall be billed directly to the escrow account established in paragraph 4 of this agreement.
6. (ATMG) shall perform the telemarketing services at the rate of \$37 per communicator hour, which will include clerical time, pledge verification, chase calls, creative fees and copy development.
7. MCI Mail Computer Letters or Western Union Mailgrams shall be sent to all pledges (at the option of ATMG) at a cost of \$1.50 per MCI message or \$3.00 per mailgram. This cost is subject to any price increases by MCI or WUEMI.
8. Soft-sell collection or "chase" letters may be sent to all unproductive pledges via MCI, Western Union or other vendor, three to four weeks after the program at a cost of \$1.10 each.

The American Telephone Marketing Group, Inc. Executive Offices: 2070 Chain Bridge Road, Suite 130, Vienna, VA 22180 (703) 790-3636

Operation Center:  
4178 South Plaza Trail  
Suite 223  
Virginia Beach, Virginia 23452  
(804) 498-7866

Operation Center:  
7023 Little River Turnpike  
Suite L-4  
Annandale, Virginia 22003  
(703) 941-9359

Operation Center:  
1204 Princess Anne Street  
Suite 100  
Fredericksburg, Virginia 22401  
(703) 371-1107

Operation Center:  
1111 North 19th Street  
Suite 515  
Rosslyn, Virginia 22209  
(703) 243-0444

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9. The escrowee shall provide ATMG with a list of all pledges received three weeks after the program ends for use in sending "chase" letters. The list shall contain the name, address, and amount of pledge in hard copy for manual entry. <sup>NSPAC</sup> ~~NGPPR~~ hereby confers upon ATMG the right to accept such source material on their behalf.
10. Payment of invoices shall be made no later than 30 days from invoice date. All invoices are to be paid directly from the escrow account (see separate agreement) before any transfer of funds to the client's operating account.
11. All names and copy provided by ATMG shall be held in strict confidence.
12. ATMG shall submit telephone and follow-up copy to ~~NGPPR~~ for written approval.
13. <sup>NSPAC</sup> ~~NGPPR~~ shall be given daily reports of results throughout the course of the project.
14. All source documents (names and numbers) shall be returned to ~~NGPPR~~.  
<sup>NSPAC</sup>
15. This agreement can be terminated by either party upon 48 hours written notice.
16. ATMG reserves the right to suspend, temporarily or indefinitely, calling on any cell which, at its discretion it feels may not produce enough revenue to cover the costs of calling that cell.

Lilly, we look forward to the opportunity of working with you on this venture. This letter can serve as a letter of agreement between ~~NGPPR~~ and ATMG, if you'll simply sign off on it and return a copy to us. This agreement, obviously, is only meant to cover our project for ~~NGPPR~~. I have also enclosed a copy of our standard escrow and cage agreement for your convenience. Many thanks.

Sincerely,

  
David A. Runko  
President

cc: Ron Kanfer

NATIONAL SECURITY POLITICAL ACTION COMMITTEE

BY 

Lilly Fedley, Secretary-Treasurer

date

DK/mlb

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## AGREEMENT

AGREEMENT made April 28, 1986, between American Telephone Marketing Group (hereinafter called the Agency), National Security Political Action Committee, (hereinafter called the Client, and Washington Intelligence Bureau, (hereinafter called the Escrowee).

## WITNESSETH:

WHEREAS, the Agency and the Client have heretofore entered into an Agreement dated April 28, 1986, pursuant to which the Agency has agreed to provide telephone fund raising services to the Client and the Client has agreed to pay supplies for the telephone fund raising program, all upon the terms and conditions set forth in the Agreement between the Agency and the Client, and,

WHEREAS, the parties desire to execute an Escrow Agreement in accord with the provisions of paragraph 4 of said Agreement,

## IT IS THEREFORE, AGREED:

1. ESCROW FUND. The Agency and the Client hereby agree that returns from the telephone fund raising programs covered by their Agreements dated April 28, 1986 shall be received by the Escrowee and the sum so received shall be known as the Escrow Fund.

2. PAYMENT OF CREDITORS. The Escrow Fund shall be held by the Escrowee separate and apart from the other funds of the Escrowee. The Agency and the Client shall mutually present the Escrowee invoices of creditors, including invoices of the Agency and the Best Lists, which the Escrowee shall pay from said Escrow fund.

Payment of any and all invoices from said Escrow Fund shall be jointly agreed upon by the Agency and the Client. If any such invoice is disputed, the Escrowee shall continue to hold the sums necessary to pay such disputed invoice in escrow until such time as the claim of debt is resolved by the Agency and the Client.

The Escrowee shall render billings for Escrowee services by the 10th day of each month for services rendered in the preceding month and payment shall be due no later than thirty days from the date of such billing. (See attached Schedule A for agreed upon Escrowee charges) If payment authorization is not received by the Escrowee for services rendered by the due date, and such

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any billings due for Escrowee services by the due date, and such billings are not in dispute, the Escrowee shall be authorized to pay such billings without the authorization of the Client or Agency. Extended Page 4.1

3. DISPUTES. In the event of any dispute with respect to disposition of all or part of the Escrow Fund, the Escrowee shall not be obligated to disburse the disputed portion thereof nor shall the Escrowee be required affirmatively to commence any action against the

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Agency or the Client or defend any action that a Creditor might bring. In his sole discretion, the Escrowee may, in the event of a dispute as to the disposition of all or part of the Escrow Fund, commence an action in a nature of interpleader and seek to deposit the disputed portion in a Court of Competent Jurisdiction.

4. OTHER AGREEMENT. The Escrowee shall not be bound by any agreement between the Agency and the Client of which he has no knowledge as of the date of this Escrow Agreement. Nor shall he be required to determine the amount of validity of any claim made against the Escrow Fund.

5. ACCOUNTING. The Escrowee shall provide the Agency and the Client a weekly accounting as to receipts and each payment or disbursement made from the Escrow Fund. Those disbursements shall only be upon the joint approval of the Agency and the Client.

6. ESCROWEE'S COMPENSATION. The compensation of the Escrowee has been fixed by the Agency, Client and Escrowee under a separate Agreement. The Escrowee shall not be entitled to any additional compensation for services rendered under this Escrow Agreement.

7. PROMPTNESS OF INVOICES. The Agency and the Client shall take reasonable steps to have all invoices attributable to the telephone fund raising programs submitted promptly to the Escrowee for payment.

8. REIMBURSEMENT OF CLIENT BRE ACCOUNT. The Escrowee shall be authorized to reimburse the Client's postal BRM account as required without any further authorization by the Agency or Client.

9. BOND AND INSURANCE. The Escrowee shall provide a bond satisfactory to the Agency and the Client to cover its services under this Agreement. The Escrowee shall also provide an insurance policy with the Agency and Client as named insureds which protects them from any losses from theft and/or embezzlements and fire during the period returns are in the care, custody and/or control of the Escrowee.

10. CLAIMS. The Agency and the Client shall at all times hereafter indemnify the Escrowee against all actions, proceedings, claims, and demands by reasons of the delivery to him of telephone fund raising proceeds and his payment of invoices under this agreement.

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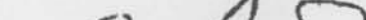
11. ASSIGNMENT AND DELEGATION. No party to this Agreement may assign any rights or delegate any duties hereunder without the express prior written consent of the other.

12. CONTROLLING LAW. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Virginia.

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14. MODIFICATION. This Agreement may not be altered or modified without the expressed written consent of the Agency, the Client and the Escrowee.

BY: DAVID A. KUNKO  
David A. Kunko, President

BY:   
Lilly Pedlay, Secretary-Treasurer

Ronald S. Lee BY: Norma A. Mathews  
Norma Mathews, President

# AGREEMENT

FEDERAL ELECTION COMMISSION  
ATTACHMENT C

AGREEMENT made \_\_\_\_\_, 19 \_\_\_\_\_, between Response Dynamics Inc.,  
(hereinafter called the Agency), \_\_\_\_\_  
(hereinafter called the Client), and \_\_\_\_\_  
(hereinafter called the Escrowee).

## WITNESSETH:

WHEREAS, the Agency and the Client have heretofore entered into an Agreement dated \_\_\_\_\_, 19 \_\_\_\_\_, pursuant to which the Agency has agreed to provide direct mail fund raising services to the Client and the Client has agreed to pay the costs for said services as well as costs for others providing services and supplies for the direct mail fund raising program, all upon the terms and conditions set forth in the Agreement between the Agency and the Client, and

WHEREAS, the parties desire to execute an Escrow Agreement in accord with the provisions of paragraph 5.c of said Agreement,

IT IS, THEREFORE, agreed:

1. ESCROW FUND. The Agency and the Client hereby agree that returns from the direct mail fund raising programs covered by their Agreements dated \_\_\_\_\_, 19 \_\_\_\_\_, shall be received by the Escrowee and the sum so received shall be known as the Escrow Fund.

2. PAYMENT OF CREDITORS. The Escrow Fund shall be held by the Escrowee separate and apart from the other funds of the Escrowee. The Agency and the Client shall mutually present the Escrowee invoices of creditors, including invoices of the Agency, which the Escrowee shall pay from said Escrow Fund.

All invoices paid from said Escrow Fund shall be jointly agreed upon by the Agency and the Client. If any such invoice is disputed, the Escrowee shall continue to hold the sums necessary to pay said disputed invoice in escrow until such time as the claim of debt is resolved by the Agency and the Client.

The Escrowee shall render billings for Escrowee services by the 10th day of each month for services rendered in the preceding month and payment shall be due no later than thirty days from the date of such billing. If payment authorization is not received by the Escrowee for any billings due for Escrowee services by the due date, and such billings are not in dispute, the Escrowee shall be authorized to pay such billings without the authorization of the Client or Agency.

If payment authorization is not received by the Escrowee, within 30 days of invoice date, for any billings due the Agency, and such billings are not in dispute, the Escrowee shall be authorized to pay such billings without written authorization of the Client.

3. DISPUTES. In the event of any dispute with respect to disposition of all or part of the Escrow Fund, the Escrowee shall not be obligated to disburse the disputed portion thereof nor shall the Escrowee be required affirmatively to commence any action against the Agency or the Client or defend any action that a creditor might bring. In his sole discretion, the Escrowee may, in the event of a dispute as to the disposition of all or part of the Escrow Fund, commence an action in a nature of interpleader and seek to deposit the disputed portion in a Court of Competent Jurisdiction.

Any dispute arising from any question involving invoices of the Agency or the Escrowee shall be made in writing within 10 days of receipt of said invoice.

4. OTHER AGREEMENTS. The Escrowee shall not be bound by any agreement between the Agency and the Client of which he has no knowledge as of the date of this Escrow Agreement. Nor shall he be required to determine the amount of validity of any claim made against the Escrow Fund.

5. ACCOUNTING. The Escrowee shall provide the Agency and the Client an accounting as to each payment or disbursement made from the Escrow Fund. Those disbursements shall only be upon the joint approval of the Agency and the Client.

6. ESCROWEE'S COMPENSATION. The compensation of the Escrowee has been fixed by the Agency, Client and Escrowee under a separate Agreement. The Escrowee shall not be entitled to any additional compensation for service rendered under this Escrow Agreement.

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7. **PROMPTNESS OF INVOICES.** The Agency and the Client shall take reasonable steps to have all invoices attributable to the direct mail fund raising programs submitted promptly to the Escrowee for payment.

8. **REPAYMENT OF POSTAGE.** All invoices for postage advances to the Client shall be paid on a priority basis. Invoices for postage advances paid from said Escrow Fund shall be authorized in writing by the Agency and shall not require the approval of the Client.

9. **REIMBURSEMENT OF CLIENT BRE ACCOUNT.** The Escrowee shall be authorized to reimburse the Client's postal BRE account as required without any further authorization by the Agency or Client.

10. **BOND AND INSURANCE.** The Escrowee shall provide a bond satisfactory to the Agency and the Client to cover its services under this Agreement. The Escrowee shall also provide an insurance policy with the Agency and Client as named insureds which protects them from any losses from theft and/or embezzlement during the period returns are in the care, custody and/or control of the Escrowee.

11. **CLAIMS.** The Agency and the Client shall at all times hereafter indemnify the Escrowee against all actions, proceedings, claims and demands by reasons of the delivery to him of direct mail fund raising proceeds and his payment of invoices under this agreement.

12. **ASSIGNMENT AND DELEGATION.** No party to this Agreement may assign any rights or delegate any duties hereunder without the express prior written consent of the other.

13. **CONTROLLING LAW.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Virginia.

14. **WAIVER.** The failure of any party to this Agreement to object or to take affirmative action with respect to any conduct by the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

15. **MODIFICATION.** This Agreement may not be altered or modified without the expressed written consent of the Agency, the Client and the Escrowee.

16. **ADDITIONAL TERMS.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned do hereby personally warrant and affirm that they are authorized to execute and bind the parties hereto.

ATTEST:

BY:

\_\_\_\_\_

\_\_\_\_\_  
Response Dynamics, Inc. (Agency) (s)

ATTEST:

BY:

\_\_\_\_\_

\_\_\_\_\_  
(Client) (s)

ATTEST:

BY:

\_\_\_\_\_

\_\_\_\_\_  
(Escrowee) (s)

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## MID AMERICA PRINTING, INC.

ATTACHMENT 2  
PAGE 1 of 10FLAT WORK PRICES

<u>#50 White Offset</u>	<u>Min.</u>	<u>Under</u> <u>5,000</u>	<u>5,000-</u> <u>14,999</u>	<u>15,000-</u> <u>24,999</u>	<u>25,000-</u> <u>99,999</u>	<u>OVER</u> <u>100,000</u>
3 1/2 x 4 1/4	\$200	5.66/M	5.66/M	5.66/M	4.16/M	2.76/M
3 1/2 x 8 1/2	\$200	11.32/M	11.32/M	8.32/M	5.53/M	3.25/M
4 1/4 x 7	\$200	11.32/M	11.32/M	8.32/M	5.53/M	3.25/M
8 1/2 x 7	\$200	22.63/M	22.63/M	16.63/M	11.06/M	5.63/M
8 1/2 x 11	\$200	23.88/M	20.87/M	20.87/M	10.00/M	10.00/M
8 1/4 x 11	\$200	23.88/M	20.87/M	20.87/M	10.00/M	10.00/M
8 x 11	\$200	23.88/M	20.87/M	20.87/M	10.00/M	10.00/M
4 1/4 x 5 1/2	\$200	5.97/M	5.97/M	5.97/M	5.22/M	5.22/M
5 1/2 x 8 1/2	\$200	11.94/M	11.94/M	10.43/M	5.88/M	5.00/M
11 x 17	\$200	47.75/M	41.75/M	23.50/M	20.00/M	17.75/M
14 x 17	\$200	50.25/M	44.25/M	26.00/M	22.50/M	20.25/M
8 1/2 x 14	\$200	45.23/M	40.25/M	21.00/M	17.50/M	15.25/M

<u>#60 White Offset</u>	<u>Min.</u>	<u>Under</u> <u>5,000</u>	<u>5,000-</u> <u>14,999</u>	<u>15,000-</u> <u>24,999</u>	<u>25,000-</u> <u>99,999</u>	<u>OVER</u> <u>100,000</u>
3 1/2 x 4 1/4	\$200	5.75/M	5.75/M	5.75/M	5.16/M	2.84/M
3 1/2 x 8 1/2	\$200	11.50/M	11.50/M	10.31/M	5.69/M	3.53/M
4 1/4 x 7	\$200	11.50/M	11.50/M	10.31/M	5.69/M	3.53/M
8 1/2 x 7	\$200	23.00/M	20.63/M	20.63/M	11.37/M	6.18/M
8 1/2 x 11	\$200	24.63/M	21.13/M	21.13/M	10.75/M	10.75/M
8 1/4 x 11	\$200	24.63/M	21.13/M	21.13/M	10.75/M	10.75/M
8 x 11	\$200	24.63/M	21.13/M	21.13/M	10.75/M	10.75/M
4 1/4 x 5 1/2	\$200	6.16/M	6.16/M	6.16/M	5.29/M	3.13/M
5 1/2 x 8 1/2	\$200	12.32/M	10.56/M	10.56/M	6.25/M	5.38/M
11 x 17	\$200	49.25/M	42.25/M	25.00/M	21.50/M	19.25/M
14 x 17	\$200	52.50/M	45.50/M	28.25/M	24.75/M	22.50/M
8 1/2 x 14	\$200	46.00/M	41.25/M	21.75/M	18.25/M	16.00/M

<u>#75 White Highbulk</u>	<u>Min.</u>	<u>Under</u> <u>5,000</u>	<u>5,000-</u> <u>14,999</u>	<u>15,000-</u> <u>24,999</u>	<u>25,000-</u> <u>99,999</u>	<u>OVER</u> <u>100,000</u>
3 1/2 x 4 1/4	\$200	(NOT AVAILABLE AT THIS TIME)				
3 1/2 x 8 1/2	\$200	(NOT AVAILABLE AT THIS TIME)				
4 1/4 x 7	\$200	(NOT AVAILABLE AT THIS TIME)				
8 1/2 x 7	\$200	(NOT AVAILABLE AT THIS TIME)				
8 1/2 x 11	\$200	26.53/M	24.03/M	24.03/M	14.91/M	13.16/M
8 1/4 x 11	\$200	26.53/M	24.03/M	24.03/M	14.91/M	13.16/M
8 x 11	\$200	26.53/M	24.03/M	24.03/M	14.91/M	13.16/M
4 1/4 x 5 1/2	\$200	6.64/M	6.64/M	6.64/M	6.01/M	6.01/M
5 1/2 x 8 1/2	\$200	13.27/M	13.27/M	12.02/M	7.46/M	6.58/M
11 x 17	\$200	53.06/M	48.06/M	29.81/M	26.31/M	24.06/M
14 x 17	\$200	(NOT AVAILABLE AT THIS TIME)				
8 1/2 x 14	\$200	(NOT AVAILABLE AT THIS TIME)				

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## ADDITIONAL CHARGES

Paper Tinting or colored paper	4.00/M (Per 11 x 17 or 14 x 17)
Full Bleed Screens	2.00/M (Per 11 x 17 or 14 x 17)
Folding (11 x 17)	7.50/M
Folding (8 1/2 x 11)	6.50/M
Gatefolding	10.00/M
Cutting (per cut)	.50/M

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Effective Date September 1, 1991

**FULFILLMENT MANAGEMENT SERVICES, INC.**  
**THANK YOU, MAILGRAM AND BIRTHDAY CARD BILLING**  
**ESTIMATED ALLOCATION OF COMPONENT COSTS**

<u>Charge</u>	<u>Thank You (Regular)</u>	<u>Thank You (High Dollar)</u>	<u>Mailgrams</u>	<u>Birthday Cards</u>	<u>Certified Mailgram</u>
Postage (first class)	Inclusive	Inclusive	Inclusive	Inclusive	Inclusive
Set Up Fee	Inclusive	Inclusive	Inclusive	Inclusive	Inclusive
Laser Printing	Inclusive	Inclusive	Inclusive	N/A	Inclusive
Material:					
Carrier	Billed Sep.	Billed Sep.	Inclusive	Inclusive	Inclusive
RAE	Billed Sep.	Billed Sep.	Inclusive	N/A	Inclusive
Flatwork	Billed Sep.	Billed Sep.	Inclusive	Billed Sep.	Inclusive
Mailshop Fees:					
Folding & Inserting	Inclusive	Inclusive	Inclusive	Inclusive	Inclusive
Stamp Affixing	Inclusive	Inclusive	Inclusive	Inclusive	Inclusive
Hand Address Carrier	N/A	Inclusive	N/A	Inclusive	N/A
Code BRE/RAE	N/A	N/A	Inclusive	N/A	Inclusive
Sealing	Inclusive	Inclusive	Inclusive	Inclusive	Inclusive
Telemarketing Fee (Data entry, data storage, processing selections, matches, O.H., etc.)	<u>N/A</u>	<u>N/A</u>	<u>Inclusive</u>	<u>N/A</u>	<u>Inclusive</u>
Price per piece	\$ .60	\$ .70	\$ .99	\$ .57	\$2.05

\* For stamped RAE add .31 cents (.29 cents for postage and .020 for stamp affixing)

\*\* 3606 fee billed separately

NOTE: Total price is fixed and is based on production cost for producing small quantities with rush/top priority turnaround conditions.

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American Graphic Design  
Summary of Graphic Charges

Description of Service	Hourly Rate	Minimum Charge
Typesetting	\$35.00	\$20.00
Proofs Up	\$35.00	N/A
Pencil Layout:		
Simple	\$35.00	N/A
Complex	\$55.00	N/A
Marker Layout:		
Simple	\$35.00	N/A
Complex	\$75.00	N/A
Photostats		
5 x 7 pos.	N/A	\$6.00
5 x 7 neg.	N/A	\$6.50
8 x 10 pos.	N/A	\$8.00
8 x 10 neg.	N/A	\$8.50
11 x 14 pos.	N/A	\$12.00
11 x 14 neg.	N/A	\$12.50
11 x 17 pos.	N/A	\$15.00
11 x 17 neg.	N/A	\$15.50



Mid America Printing, Inc.  
Summary of Printing Charges

W/R	Size / Color	Flat Minimum Price	Price Per Thousand
W	11 Lt. Blue	100.00	27.00
W	11 White	100.00	24.00
W	11 Brown Kraft	100.00	29.00
W	11 Canary	105.00	31.00
W	11 Natural Kraft	100.00	29.00
R	11 Brown Kraft	105.00	30.00
R	11 Canary	105.00	30.00
R	11 Stone Kraft	105.00	31.00
R	11 White	105.00	28.00
W	10 White	75.00	21.00
W	10 White Laid	85.00	25.00
W	10 Ivory	85.00	24.00
W	10 Ivory Laid	85.00	24.00
W	10 Canary	75.00	24.00
W	10 Gray	75.00	24.00
W	10 Brown Kraft	75.00	24.00
W	10 Natural Kraft	85.00	26.00
W	10 Pearl Linen	100.00	29.00
R	10 Stone Kraft	90.00	26.00
R	10 Brown Kraft	90.00	25.00
R	10 Cougar Opaque	100.00	27.00
R	10 Canary	75.00	23.00
R	10 Gray	85.00	23.00
R	10 White	75.00	23.00
R	10 Ivory	75.00	23.00
W	9 White	75.00	21.00
W	9 Ivory	85.00	25.00
W	9 Gray	85.00	25.00
R	9 White	70.00	19.00
R	9 Ivory	75.00	24.00
R	9 Gray	75.00	24.00
R	8 White	67.00	20.00
W	7 3/4 White	70.00	22.00
W	7 3/4 Ivory	75.00	23.00
W	7 3/4 Gray	75.00	23.00
W	7 3/4 Ivory Laid	85.00	26.00
W	7 3/4 White Laid	85.00	25.00
R	7 3/4 White	75.00	22.00
R	7 3/4 Ivory	75.00	22.00
R	7 3/4 Gray	75.00	22.00
W	4 X 6 1/2 White	75.00	22.00

9 6 0 4 3 7 0 9 2 7

R	4 X 6 1/2 White	85.00	26.00
R	6 3/4 White	65.00	19.00
R	6 3/4 White	67.00	19.00
R	6 3/4 Ivory	65.00	18.00
R	6 1/4 White	69.00	20.00
R	6 X 9 White	100.00	29.00
R	6 X 9 Brown Kraft	100.00	29.00
M	6 X 9 White	100.00	29.00
M	6 X 9 Brown Kraft	105.00	30.00
R	5 X 8 White	80.00	23.00
R	5 X 8 Gray	105.00	44.00
R	B - Day Card	105.00	30.00

Additional Charges

- 1.) Plates are \$ 35.00 each.
- 2.) Printing on back flap is \$ 2.00/M extra.
- 3.) Full bleed screens are \$ 4.00/M extra.
- 4.) Printing on back flap for 811 or 6 X 9 is \$4.00/M extra.

9 6 0 4 3 7 0 9 8 2

Mid America Printing, Inc.  
Summary of Printing Charges

	Flat Minimum Price	Price Per Thousand
A. 17 X 11, print both sides:		
1. White Move	100.00	50.00
2. Canary Move	100.00	35.00
3. Gray Move	100.00	35.00
4. Ivory Move	100.00	35.00
B. 17 X 11, print one side:		
1. White Move	100.00	40.00
2. Canary Move	100.00	45.00
3. Gray Move	100.00	45.00
4. Ivory Move	100.00	45.00
C. 8 1/2 X 14		
1. White Move, print both sides	100.00	45.00
2. White Move, print one side	100.00	35.00
D. 8 1/2 X 11		
1. White Move, print both sides	100.00	45.00
2. White Move, print one side	100.00	35.00

Additional Charges:

1.) Full bleed screens are \$ 10.00 extra.

6 6 0 7 1 2 7 0 9 6

Direct Response Data Management, Inc.  
Price List

Description of Service	Current Price Per Thousand
<b>Key Punching (P.A.C.'s) / Online System:</b>	
Adda (New / House)	270.00
Changes (ACR's / Dedupers)	270.00
Flag Coding	80.00
<b>Key Punching (All Others) :</b>	
Adda (New / House)	180.00
Changes (ACR's / Dedupers)	180.00
Flag Coding	80.00
<b>File Storage</b>	
P.A.C.'s	28.00
All Others	25.00
<b>Tape Conversion</b>	2.00
<b>Programming</b>	60 / Hour
<b>Set-up and Mats:</b>	
Laser Printing	\$5.00/H or \$2
Thank You	\$75.00 per 10
<b>Laser Printings</b>	
A. 11 X 17 (2 up)	40.00
B. 11 X 17	60.00
C. 8 1/2 X 14	45.00
D. 8 1/2 X 11	35.00
<b>E. Autotyping:</b>	
Regular	60.00
Pressure Sensitive	15.00
Oversized Labels	20.00
<b>F. Thank You</b>	120.00
<b>G. ATPO Mailgram</b>	100.00
<b>H. Tesser Print on Carrier</b>	20.00

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Fulfillment Management Services, Inc.  
Price List

Basic Handworker Charges

Handwriting:

Address block  
Signature  
Tosser  
Corner Card

Price  
Per Thousand

150.00  
50.00  
100.00  
100.00

Stamp Affixing:

Carrier  
Roe

20.00  
20.00

Label Affixing:

Address:  
Large label  
Small label  
Tosser

30.00  
20.00  
20.00

Certified label

30.00

Rubber Stamping (per stamp)

10.00

Cut and Fold:

Basic (8 1/2 X 11)  
Basic (17 X 11)  
Extra Data (march, petite etc.)  
Gatefold

6.50  
7.50  
6.50 Each Cut/W  
10.00

Match Mailing:

2 way  
3 way  
4 way  
5 way  
6 way

30.00  
60.00  
80.00  
100.00  
120.00

Note: A handaddressed label does count as a matched component)

Additional Handworker Charges

Window carrier  
Closed faced carrier  
Oversized carriers (6 X 9, 8 1/2, 8 1/4)  
Paperclipping  
Retiring  
Hard fold  
Hard fold more than 3 inserts (each additional)  
Staple  
Tape

25.00  
25.00  
30.00  
30.00  
10.00  
40.00  
20.00  
25.00  
20.00

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Hand seal specialty envelope (ex. 9 X 12 flap)  
 Preparation of sailgrass  
 Preparation of thank you and chase letters:  
   Regular  
   High Seller  
 Delivery (other than local Post Office) per delivery

20.00  
 1.010.00  
 562.00  
 932.00  
 25.00

\*\*\*\*\*Note: Minimum charge on all packages is \$ 125.00

# Machine Mailing Prices

	Price Per Thousand
Cheshire	
Insert	5.00
Meter:	9.00
Bulk	
1st Class	3.00
Zip, Tie, Bag (Bulk Mail Only)	3.00
1st Class Charge	4.00
Live Stamp	3.00
	4.00

## Totals:

Meter Bulk	23.00
Meter 1st Class	20.00
Live Stamp Bulk	24.00
Live Stamp 1st Class	21.00

## Additional Machine Charges

Overlaid Insert	
4 X 9	5.00
8 11	5.00
Delivery (other than local Post Office) per delivery	25.00
Multiple Lists Set Up	0.00

\*\*\*\*\*Note: Minimum charge on all packages is \$ 125.00

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## AGREEMENT

Response Dynamics, Inc. (RDI) will act as agent for \_\_\_\_\_  
(The Committee) in carrying out certain direct response programs subject to the approval  
of The Committee. These projects shall be conducted under the following terms and  
conditions.

1. RDI will provide The Committee with copy, artwork, and telemarketing scripts which shall be approved in writing by The Committee prior to any use by RDI.
2. As agent for The Committee, RDI will order the purchase of all materials and services required for each project.
3. All return mail from each project shall be directed to an independent third party lock box operation who shall open all mail, tabulate results, make cash deposits into The Committee's direct mail account, and perform other services that may be required.
4. All invoices related to RDI's services on behalf of The Committee shall be paid as soon as possible after The Committee's receipt of invoices, but in no event later than 60 days from invoice date. All such invoices will be received by RDI, approved for accuracy and submitted to The Committee on a regular basis.
5. RDI's agency fee will be fifty dollars (\$50.00) per thousand pieces mailed. Other related costs will include envelopes, flatwork, laser printing, postage, list rental, lettershop services, lock box services, computer list maintenance and other ordinary and necessary expenses.
6. Cost projections will be given on the basis of a price per thousand pieces produced. Back end costs, such as BRM postage, lock box, and file maintenance will be directly related to the actual number of responses received from any project.
7. All names generated by direct response programs conducted under this agreement will be co-owned by RDI and The Committee without restriction.
8. Updated statistical data on the results of all projects will be submitted to The Committee at least once each week or as requested by The Committee.
9. This agreement may be terminated by either party upon 60 days written notice.

This agreement will be effective \_\_\_\_\_, 1992 and shall remain in effect until terminated as provided herein.

AGREED:

AGREED:

\_\_\_\_\_  
The Committee\_\_\_\_\_  
Response Dynamics, Inc.

26043770903

AFFIDAVIT OF DAVID A. KUNKO

92 NOV 23 PM 4:46

I, David A. Kunko, do hereby swear and affirm that the following is true and correct, to the best of my knowledge and belief:

1. I am the Chairman of Response Dynamics, Inc. ("RDI"). Ronald A. Kanfer and I are the co-founders of RDI, American Telephone Marketing Group, Inc. ("ATMG"), The Best Lists, Inc. ("BLI"), Fulfillment Management Services, Inc. ("FMS"), American Graphic Design ("AGD"), A Division of RDI, Direct Response Data Management, Inc. ("DRDM") and Mid-America Printing, Inc. ("MAP") (collectively, the "Companies").<sup>1</sup> Mr. Kanfer and I each own fifty percent (50%) of the Companies. I have responsibility for the business and accounting functions of the Companies, and Mr. Kanfer is responsible for creative matters.

2. I have read the Complaint dated October 2, 1992, filed by the Democratic National Committee. Each and every allegation and implied allegation of violations of the Federal Election Campaign Act concerning the Companies is false and unfounded.

I. Personal Background

3. I received a B.S. from Pennsylvania State University, and I have been a Certified Public Accountant since 1977. I have extensive experience in the direct response business, including

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<sup>1</sup> We also co-founded and own Direct Response Data Management, which produces letters and handles file management.

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the direct mail and telemarketing businesses. Prior to co-founding RDI and its sister companies, I served as Executive Vice President with another large Washington-area direct response marketing agency.

4. I am a member of many direct response professional organizations, including the Direct Marketing Association, the Association of Fundraising List Professionals, the American Telemarketing Association, the Direct Marketing Association of Washington, the Non-Profit Mailers Federation and the Association of Direct Response Fund Raising Council.

## II. The Companies

5. Together, the Companies offer a complete range of services for direct mail and telemarketing campaigns, both political and non-political. The fact that we offer so many services is a selling point for potential clients. We actively market the Companies as a family of companies. We currently have approximately 200 employees.<sup>2</sup>

6. RDI is a direct mail agency, handling direct mail programs from start to finish. RDI charges a fee per letter for acting as a client's agent in carrying out direct mail programs. RDI never undertakes any work without a client's approval.

7. ATMG engages in telemarketing, specializing in

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<sup>2</sup> The Companies have a central business office in Vienna, Virginia, which is also RDI's headquarters. The Operations Centers of ATMG, FMS and Mid-America are all located in Fredericksburg, Virginia.

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telephone fundraising campaigns. It became a division of RDI on January 1, 1990.

8. ATMG and RDI do not collect the monies raised in any of their campaigns. Their standard contracts require that their clients arrange for an independent escrow agent and lock box operation to collect monies and place them in an escrow account.

9. Best Lists is a mailing list and calling list broker. It obtains lists of prospective contributors for clients. Often, Best Lists rents lists of potential contributors, which are then used by RDI in a direct mail campaign and by ATMG in a telemarketing campaign. RDI and ATMG are authorized by clients in their standard written contracts to use Best Lists as their agent to rent lists. Best Lists does not undertake any work on behalf of any client without the client's advance approval.

10. Mid-America FMS and AGD all perform work for RDI's clients in carrying out direct mail campaigns. While RDI technically has the right to select such vendors under the standard written contract, RDI does not do so without the client's approval.

11. Mid-America prints letters and materials; FMS inserts letters and material into envelopes; and AGD is a division of RDI which does design graphics such as bumper stickers and posters for client mailings.

### III. The Companies' Work for NSPAC

12. Mr. Kanfer and I had performed fundraising work for



Elizabeth Fediay from 1978 to 1981 while at another firm.<sup>1</sup> In early 1986, Ms. Fediay asked us to take on work for the National Security Political Action Committee ("NSPAC"). Based upon our positive experience with her in the past, including her prompt payment in full record, we agreed to do so.

13. On April 7, 1986, NSPAC, by Ms. Fediay, entered into RDI's standard vendor/client contract. A true and correct copy of this contract is attached hereto as Attachment A. In the contract, RDI was appointed as NSPAC's exclusive agent to carry out a direct response fundraising campaign. NSPAC agreed in the contract to be billed at RDI's standard rates (specifically, \$50 per 1,000 letters), and NSPAC also agreed to RDI's standard payment terms. The terms conform to the usual and normal practice in our trade. The contract is RDI's pre-printed standard agreement.

14. Similarly, on April 28, 1986, NSPAC, by Ms. Fediay, entered into ATMG's standard written agreement with ATMG for a telephone fundraising campaign. A true and correct copy of this agreement is attached hereto as Attachment B. Again, this contract contains ATMG's standard fees and terms. The terms conform to the usual and normal practice in our trade.

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<sup>1</sup> Ms. Fediay had a solid payment record with that firm during this period.

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15. Under both contracts, an independent third-party escrow agent must be employed. The escrow agent is responsible for tabulating all funds received, depositing the funds in an escrow account and disbursing monies from the account. Such disbursements occur only upon the written approval of NSPAC and RDI, or NSPAC and ATMG, respectively.

16. RDI, ATMG and NSPAC did enter into such escrow arrangements with the Washington Intelligence Bureau ("WIB"), a company not affiliated in any way with Mr. Kanfer, myself or any of the Companies. The WIB has collected the funds raised for NSPAC and maintained the escrow accounts. A true and correct copy of the Escrow Agreement among WIB, ATMG and NSPAC is attached hereto as Attachment C.<sup>4</sup>

17. In the fall of 1987, Ms. Fedlay asked Mr. Kanfer and me to undertake a project for NSPAC to raise funds for independent expenditures in support of then Vice President Bush's election. The project was named "Americans for Bush."

18. We agreed, on behalf of RDI and ATMG, to take on the project under our existing written contracts, and RDI tested two mailings before beginning the full-scale project. In addition, ATMG began several telemarketing campaigns. All mailings and telephone solicitations conducted for the "Americans for Bush" project were handled in the same manner as other NSPAC (and other

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<sup>4</sup> There is an identical Escrow Agreement among WIB, RDI and NSPAC.

clients') projects, pursuant to the same contracts and practices.

19. RDI has mailed approximately 15,000,000 letters for NSPAC and "Americans for Bush."

#### IV. NSPAC's Fundraising Costs and Payments

20. NSPAC did not receive any special treatment or arrangement concerning its bills. NSPAC was invoiced monthly for all other fees and expenses. NSPAC had paid consistently, until November 1988. In October a business decision was made to mail approximately 3 million letters on previously tested lists. The projection indicated that the mailing would net more than \$700,000. The actual results of the mailings were a loss of about \$400,000. The difference between the projected gain and the actual loss on this mailing was over 1 million dollars and nearly accounts for the entire debt that NSPAC has with RDI and related companies. RDI believes the variation in the projection verses actual on this particular mailing was due to the increasing point spread in the polls in the final month before the Bush-Dukakis election.

21. The Companies have earned more net income from work performed on the Americans for Bush account than any other account they have handled within the same time frame.

22. The Americans for Bush mailing list continues to earn significant net dollars for the Companies and is expected to continue earning income over the next four years.

23. List rental income earned from the Americans for Bush mailing list of 128,000 names and new accounts produced as a result of publicity over this project has more than offset all 1.3 million dollars outstanding to the companies.

24. NSPAC's costs were comparable to those of other political fundraising campaigns with which I am familiar. RDI's prospecting for NSPAC has cost approximately forty-one cents (\$.41) per dollar contributed. I understand that the Bush campaign's prospecting cost is approximately thirty-nine cents (\$.39) per dollar contributed.

V. An Arm's-Length Relationship With  
Ms. Fediay/Floyd Brown/NSPAC

25. Ms. Fediay and Floyd Brown are not employees, consultants, directors or stockholders in any of the Companies or any other company affiliated with them, Mr. Kanfer or myself. They have not been paid by the Companies or me in connection with, or to secure, NSPAC's business. They do not make any profit on the work performed by the Companies for NSPAC. They do not receive a percentage payment of any nature from the Companies or any person affiliated with them. I am not a contributor to, nor in any way connected with, NSPAC or "Americans for Bush." NSPAC does not have an office in any building where the Companies' offices are located. NSPAC's offices are located in Washington, D.C., and the Companies do not have any offices in

Washington, D.C. I have not had any involvement with any of the television advertisements that I understand NSPAC produced.

26. Ms. Fediay, Floyd Brown, NSPAC and "Americans for Bush" are not treated any differently than any of the Companies' other customers.

27. There are no additional commercially reasonable steps for the Companies to undertake to collect fees owed by NSPAC given its present financial resources and its inability in the present political environment to generate additional funds.

28. The companies did not receive less compensation for the services than would have been the industry norm. There was, for Response Dynamics, a very successful commercial relationship between it and NSPAC.

29. It is not uncommon in the direct response/direct mail industry for some clients to incur substantial unpaid debts. This is a usual and normal experience in the industry, because of the significant initial expenses for mailing and always uncertain degree of contributor response to any particular fundraising package. It is not possible to be assured that each mailing package will return sufficient funds to pay all expenses and vendor profit provided for in an agreement. The debts arising out of the business relationship between NSPAC and the companies are not excessive in light of the substantial profits made by the companies and their retention of valuable lists of NSPAC donors created through the mailings. The economic terms of the

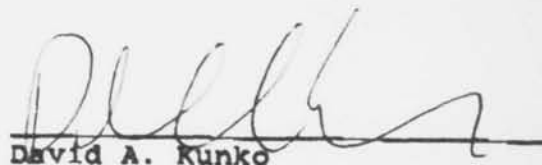


agreement between NSPAC and the companies were sufficiently favorable that no one familiar with the business could conclude that they masked an intended contribution to NSPAC or resulted in an actual contribution.

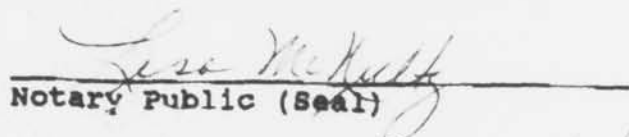
VI. Republican Challengers Committee

30. RDI entered into a fundraising agreement with RCC on November 7, 1989. RDI standard pre-printed agreement was used and the RDI fee was set at the standard rate of \$50.00 per thousand pieces mailed. After about a year of standard direct mail prospect package testing and remailings to active donors of RCC, RDI determined that the project did not have the potential that we originally hoped it would have. Based on the results of all work performed by RDI for RCC, RDI made a business decision to temporarily reduce the level of mail volume until the political fundraising climate improved.

Further, Affiant saith not.

  
David A. Kunko

Signed and sworn to before me  
this 23rd day of November, 1992.

  
Notary Public (Seal)

My commission expires 4/30/93

AFFIDAVIT OF RONALD A. KANFER

I, Ronald A. Kanfer, do hereby swear and affirm that the following is true and correct, to the best of my knowledge and belief:

1. I am the President of Response Dynamics, Inc. ("RDI"). David Kunko and I co-founded RDI, American Telephone Marketing Group, Inc. ("ATMG"), The Best Lists, Inc. ("BLI"), Fulfillment Management Services, Inc. ("FMS"), American Graphic Design ("AGD"), A Division of RDI, Direct Response Data Management, Inc. ("DRDM") and Mid-America Printing, Inc. ("MAP") (collectively, the "Companies").<sup>1</sup> Mr. Kunko and I each own fifty percent (50%) of the Companies. I have responsibility for creative matters; Mr. Kunko handles business and accounting functions.

2. I have read the Complaint dated October 2, 1992, filed by the Democratic National Committee. Each and every allegation and implied allegation of violations of the Federal Election Campaign Act concerning the Companies is false and unfounded.

I. Personal Background

3. I have been involved in the direct mail and tele-marketing business for many years. I received a B.A. from the University of Oklahoma in 1968 and a M.A. from Ball State University in 1970, and I have completed the doctoral courses in German History at West Virginia University in 1975. Prior to

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<sup>1</sup> We also co-founded and own Direct Response Data Management, which produces letters and handles file management.

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German History at West Virginia University in 1975. Prior to co-founding RDI and its sister companies, I was an account executive for a large Washington direct response agency. I have also served as a consultant and speech writer for several senatorial and gubernatorial campaigns.

4. I am a member of many direct response professional associations, including the Direct Marketing Association, the Association of Fundraising List Professionals, the American Telemarketing Association, the Direct Marketing Association of Washington, the Non Profit Mailers Federation and the Association of Direct Response Fund Raising Council.

## II. The Companies

5. Together, the Companies offer a complete range of services for direct mail and telemarketing campaigns, both political and non-political. The fact that we offer so many services is a selling point for potential clients. We actively market the Companies as a family of companies. We currently have approximately 200 employees.<sup>2</sup>

6. RDI is a direct mail agency, handling direct mail programs from start to finish. RDI charges a fee per letter for acting as a client's agent in carrying out direct mail programs. RDI never undertakes any work without a client's approval.

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<sup>2</sup> The Companies have a central business office in Vienna, Virginia, which is also RDI's headquarters. The Operations Centers of ATMG, FMS and Mid-America are all located in Fredericksburg, Virginia.

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7. ATMG engages in telemarketing, specializing in telephone fundraising campaigns. It became a division of RDI on January 1, 1990.

8. ATMG and RDI do not collect the monies raised in any of their campaigns. Their standard contracts require that their clients arrange for an independent escrow agent and lock box operation to collect monies and place them in an escrow account.

9. Best Lists is a mailing list and calling list broker. It obtains lists of prospective contributors for clients. Often, Best Lists rents lists of potential contributors, which are then used by RDI in a direct mail campaign and by ATMG in a telemarketing campaign. RDI and ATMG are authorized by clients in their standard written contracts to use Best Lists as their agent to rent lists. Best Lists does not undertake any work on behalf of any client without the client's advance approval.

10. Mid-America, FMS, and AGD all perform work for RDI's clients in carrying out direct mail campaigns. While RDI technically has the right to select such vendors under the standard written contract, RDI does not do so without the client's approval.

11. Mid-America prints letters and materials; FMS inserts letters and material into envelopes; and AGD is a division of RDI which does design graphics such as bumper stickers and posters for client mailings.

### III. The Companies' Work for NSPAC

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12. Mr. Kunko and I had performed fundraising work for Elizabeth Fediay from 1978 to 1981 while at another firm. In early 1986, Ms. Fediay asked us to take on work for the National Security Political Action Committee ("NSPAC"). Based upon our positive experience with her in the past, including her prompt payment in full record, we agreed to do so.

13. On April 7, 1986, NSPAC, by Ms. Fediay, entered into RDI's standard vendor/client contract. A true and correct copy of this contract is attached hereto as Attachment A. In the contract, RDI was appointed as NSPAC's exclusive agent to carry out a direct response fundraising campaign. NSPAC agreed in the contract to be billed at RDI's standard rates (specifically, \$50 per 1,000 letters), and NSPAC also agreed to RDI's standard payment terms. The terms conform to the usual and normal practice in our trade. The contract is RDI's pre-printed standard agreement.

14. Similarly, on April 28, 1986, NSPAC, by Ms. Fediay, entered into ATMG's standard written agreement with ATMG for a telephone fundraising campaign. A true and correct copy of this agreement is attached hereto as Attachment B. Again, this contract contains ATMG's standard fees and terms. The terms conform to the usual and normal practice in our trade.

15. Under both contracts, an independent third party escrow agent must be employed. The escrow agent is responsible for tabulating all funds received, depositing the funds in an escrow account and disbursing monies from the account. Such disburse-



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ments occur only upon the written approval of NSPAC and RDI, or NSPAC and ATMG, respectively.

16. RDI, ATMG and NSPAC did enter into such escrow arrangements with the Washington Intelligence Bureau ("WIB"), a company not affiliated in any way with Mr. Kunko, myself or any of the Companies. The WIB has collected the funds raised for NSPAC and maintained the escrow accounts. A true and correct copy of the Escrow Agreement among WIB, ATMG and NSPAC is attached hereto as Attachment C.<sup>3</sup>

17. In the fall of 1987, Ms. Pedyay asked Mr. Kunko and me to undertake a project for NSPAC to raise funds for independent expenditures in support of then Vice President Bush's election. The project was named "Americans for Bush."

18. We agreed, on behalf of RDI and ATMG, to take on the project under our existing written contracts, and RDI tested two mailings before beginning the full-scale project. In addition, ATMG began several telemarketing campaigns. All mailings and telephone solicitations conducted for the "Americans for Bush" project were handled in the same manner as other NSPAC (and other clients') projects, pursuant to the same contracts and practices.

19. RDI has mailed approximately 15,000,000 letters for NSPAC and "Americans for Bush."

#### IV. NSPAC's Fundraising Costs and Payments

20. NSPAC did not receive any special treatment or

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<sup>3</sup> There is an identical Escrow Agreement among WIB, RDI and NSPAC, which unfortunately we have been unable to locate.

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arrangement concerning its bills. NSPAC was invoiced monthly for all other fees and expenses. NSPAC had paid consistently, until November 1988. In October a business decision was made to mail approximately 3 million letters on previously tested lists. The projection indicated that the mailing would net more than \$700,000. The actual results of the mailings were a loss of about \$400,000. The difference between the projected gain and the actual loss on this mailing was over 1 million dollars and nearly accounts for the entire debt that NSPAC has with RDI and related companies. RDI believes the variation in the projection verses actual on this particular mailing was due to the increasing point spread in the polls in the final month before the Bush-Dukakis election.

21. The Companies have earned more net income from work performed on the Americans for Bush account than any other account they have handled within the same time frame.

22. The Americans for Bush mailing list continues to earn significant net dollars for the Companies and is expected to continue earning income over the next four years.

23. List rental income earned from the Americans for Bush mailing list of 128,000 names and new accounts produced as a result of publicity over this project has more than offset all 1.3 million dollars outstanding to the companies.

21. NSPAC's costs were comparable to those of other political fundraising campaigns with which I am familiar. RDI's prospecting for NSPAC has cost approximately forty-one cents

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(\$.41) per dollar contributed. I understand that the Bush campaign's prospecting cost is approximately thirty-nine cents (\$.39) per dollar contributed.

24. There are no additional commercially reasonable steps for the companies to undertake to collect fees owned by NSPAC given its present financial resources and its inability in the present political environment to generate additional funds.

25. The companies did not receive less compensation for the services than would have been the industry norm. There was, for Response Dynamics, a very successful commercial relationship between it and NSPAC.

26. It is not uncommon in the direct response/direct mail industry for some clients to incur substantial unpaid debts. This is a usual and normal experience in the industry, because of the significant initial expenses for mailing and always uncertain degree of contributor response to any particular fundraising package. It is not possible to be assured that each mailing package will return sufficient funds to pay all expenses and vendor profit provided for in an agreement. The debts arising out of the business relationship between NSPAC and the companies are not excessive in light of the substantial profits made by the companies and their retention of valuable lists of NSPAC donors created through the mailings. The economic terms of the agreement between NSPAC and the companies were sufficiently favorable that no one familiar with the business could conclude that they masked an intended contribution to NSPAC or resulted in

an actual contribution.

V. An Arm's-Length Relationship With  
Ms. Fediay/Floyd Brown/NSPAC

27. Ms. Fediay and Floyd Brown are not employees, consultants, directors or stockholders in any of the Companies or any other company affiliated with them, nor Mr. Kunko or myself. They have not been paid by the Companies or me in connection with, or to secure, NSPAC's business. They do not make any profit on the work performed by the Companies for NSPAC. They do not receive a percentage payment of any nature from the Companies or any person affiliated with them. I am not a contributor to, nor in any way connected with, NSPAC or "Americans for Bush." NSPAC does not have an office in any building where the Companies' offices are located. NSPAC's offices are located in Washington, D.C., and the Companies do not have any offices in Washington, D.C. I have not had any involvement with any of the television advertisements that I understand NSPAC produced.

28. Ms. Fediay, Floyd Brown, NSPAC and "Americans for Bush" are not treated any differently than any of the Companies' other customers.

VI. Edward Kennedy Advertisement

29. I have not financed an advertisement attacking Senator Edward Kennedy or any other United States Senator or Congressmen produced by Floyd Brown or any other individual associated with NSPAC.

VII. Republican Challengers Committee

30. RDI entered into a fundraising agreement with RCC on November 7, 1989. RDI standard pre-printed agreement was used and the RDI fee was set at the standard rate of \$50.00 per thousand pieces mailed. After about a year of standard direct mail prospect package testing and remailings to active donors of RCC, RDI determined that the project did not have the potential that we originally hoped it would have. Based on the results of all work performed by RDI for RCC, RDI made a business decision to temporarily reduce the level of mail volume until the political fundraising climate improved.

Further, Affiant saith not.

Ronald A. Kanfer  
Ronald A. Kanfer

Signed and sworn to before me 1992  
this 23<sup>rd</sup> day of November, 1988.

Lisa M. Kelly  
Notary Public (Seal)

My commission expires 4/30/93



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

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
MAIN COPY ROOM

DEC 3 11 45 AM '92

December 1, 1992

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

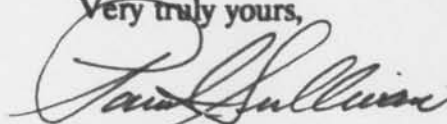
Re: MUR 3638

Dear Mr. Zanfardino:

Please find enclosed, the response filed by the on behalf of National Security PAC in the above-referenced matter. Should you have any further questions on this, please contact me at your earliest convenience.

Thank you for your time and attention to this matter.

Very truly yours,



Paul E. Sullivan

Enclosure

cc: E. I. Fediay  
Chairman Aikens  
Vice Chairman Thomas  
Commissioner Elliott  
Commissioner McGarry  
Commissioner Potter  
Commissioner McDonald

92 DEC -3 PM 3:11

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BEFORE THE FEDERAL ELECTION COMMISSION

Democratic National Committee

v.

Response Dynamics, Inc., et al.

MUR 3635

RTB Response by National Security PAC

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This response is filed pursuant to 2 U.S.C. §437g(a)(1) on behalf of National Security Political Action Committee, ("NSPAC") or ("Respondent") in response to a complaint filed by the Democratic National Committee, ("DNC"), alleging the acceptance of illegal corporate contributions in violation of 2 U.S.C. §441b, by virtue of Respondent's failure to pay debts which it has outstanding from the 1988 general election. For the reasons stated below, Respondent contends that the debts were incurred as a result of an arm's length business transaction and, notwithstanding various attempts for further fundraising, revenues have not been obtained by which to pay off this outstanding debt. These transactions were undertaken in compliance with the Federal Election Campaign Act of 1971, as amended, ("FECA") and the applicable Federal Election Regulations, ("Regulations") and as such, Respondents request the Commission to make a finding of no reason to believe and close the file.

I.

**Factual Summary**

Since its inception, Elizabeth I. Fediay has served as treasurer and primary decision making authority for NSPAC.

In 1986, Ms. Fediay sought to retain the services of a proven direct-mail firm for purposes of developing a contributor base for NSPAC capable of generating sufficient revenues which she desired for contributions during the 1988 elections. As a result, in the spring of 1986, NSPAC contracted with Response Dynamics, Inc. ("RDI") and continued to utilize their services until NSPAC ceased its fundraising efforts in 1990.

At that time in 1986, Ms. Fediay signed on behalf of NSPAC the standard RDI, "boiler plate" contract. The various subsidiary organizations which conducted telemarketing, list sales, etc. were chosen by RDI in accordance with provisions of the RDI-NSPAC contract agreements. At no time preceding 1989, did NSPAC seek to negotiate any special provisions in the contract nor was any extraordinary provision made in the contract. The contract executed by NSPAC with RDI was the standard contract, as presented by RDI, represented to be utilized for all of RDI's political clients.

In February of 1989, the sole amendment to that contract was agreed to between NSPAC and RDI (see Exhibit "A"). At that point and time, subsequent to the 1988 Presidential elections, NSPAC found itself in substantial debt, which needless to say, is the present state of affairs for NSPAC, as reflected on its FEC disclosure statements. That single amendment to

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the April, 1986 contract amended ¶4(a) to reduce the mailing list charges from \$50.00 per thousand to \$35.00 per thousand. This was done so in an attempt to enable NSPAC to generate more mail with the desire to produce greater net revenue in order to generate funds necessary to retire the debt, which was owed primarily to RDI and its subsidiary organizations. This amendment was made after substantial negotiation between RDI and NSPAC. Virtually all net proceeds NSPAC received from that point forward were for purposes of debt retirement not new contributions or projects.

## II.

### Legal Analysis and Arguments

The Complaint alleges that NSPAC accepted illegal corporate contributions by virtue of the substantial debt which it presently has outstanding to RDI and that such debt was generated solely upon the basis that RDI provided a contract to NSPAC on terms which were less than an arm's length standard business transaction. The Complainant makes a leap in logic which does not justify the conclusions alleged in the Complaint. The mere fact that a political committee has a debt and in this particular case, a substantial debt, does not indicate that the terms of the agreement by which the credit was extended at the time it was negotiated, was less than that which would meet a commercially reasonable standard.

As a preface to this presentation, the Commission must be reminded that the present Regulations which discuss the extension of credit at 11 C.F.R. §116.3 et. seq. is not the standard by which this matter should be judged. As the Commission is well aware, those regulations did not become effective until June 27, 1990. The regulatory standard at the time

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the 1986 contract was negotiated and executed, was far less detailed than the standard presented today.<sup>1</sup> Therefore, for purposes of this provision, the Regulations, as revised as of July 1, 1987 is the regulatory language upon which Respondent shall rely for purposes of this presentation and the standard to which the Commission should measure its adjudication. The basic 1987 regulatory provision dealing with the extension of credit stated,

A corporation may extend credit to a candidate, political committee, or other person in connection with a federal election provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to the extensions of credit to non-political debtors which are of similar risk and size of obligation.  
(11 C.F.R. §114.10(a))

The only other substantial reference to the extension of credit in those regulations defines a contribution to be, "the extension of credit by any person for a length of time beyond normal business or trade practices. . ." (11 C.F.R. §100.7(a)(4))

Based upon this regulatory scheme, provided that the credit was extended in the ordinary course of the corporation's business, then such credit is not a contribution. Focusing at the time in 1986 when the contract was entered into between NSPAC and RDI, it was NSPAC's understanding that the contract that was being tendered to it for services by RDI was the contract used by RDI in the ordinary course of its business and therefore, no inordinate credit extension was provided to NSPAC. As was noted above, NSPAC neither negotiated, nor did it believe it obtained, any preferential treatment over and above other clients of RDI relative to credit or

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<sup>1</sup> Respondent does not intend to imply that the 1986 contract would not generally meet the §116 standards; it would. However, Respondent had far less guidance from the regulations in 1986 than would presently be available to committees, for determining an arms length contract.



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payment schedules. The fact NSPAC signed the boilerplate RDI contract without amendment, evidences the fact that no inordinate credit beyond the normal business standard was extended to NSPAC.

NSPAC's attempts subsequent to the 1988 election to continue fundraising for purposes of retiring the 1988 debt were a substantial cause for the debt incurred as represented by the present NSPAC FEC report. This on its face, demonstrates NSPAC's attempt to conduct ongoing fundraising efforts in an attempt to reduce or retire the debt. An analysis of those reports during the last quarter of 1988 and 1989 will demonstrate that these efforts concluded in a net loss to NSPAC. It was for that very reason that NSPAC has elected to cease all attempts at direct mail fundraising because it merely was adding to the outstanding debt rather than netting out funds which could be used to retire the debt.

On this basis, the Commission must bifurcate its assessment of the NSPAC/RDI relationship for purposes of determining whether there was an improper extension of credit as alleged in the Complaint. As noted above, the mere fact that RDI and NSPAC entered into an arm's length standard business fundraising contract is more than sufficient evidence to demonstrate that there was no improper extension of credit, and therefore, no violation of the Act, as alleged in this Complaint.

The second prong of this analysis goes to NSPAC's attempts to retire the outstanding debt, which continues to be owing primarily to RDI and its subsidiary corporation. First, NSPAC made continuous efforts to raise funds to retire the debt. Those efforts ceased only when it was evident it was a net loss proposition. Rather than increase the debt, a decision was

made to discontinue such efforts. Second, for purposes of this Complaint, the present debt is not an issue, and should neither be addressed nor should it impact upon the Commission's determination for dismissing the allegations in the Complaint. Those determinations will be properly undertaken at such time that NSPAC seeks, if ever, a debt forgiveness or settlement agreement with RDI. Under the present regulations, the Commission is well aware that debt settlements or debt forgivenesses must come before the Commission for its approval. (11 C.F.R. §116.0 et seq.)

For the reasons stated above, the Respondent request that the Commission make a finding that no improper extension of credit was made by RDI to NSPAC and therefore, no violations of the Act occurred. A finding of no reason to believe and close the file is sought by the Respondent in this matter, and the facts, certainly provide no other basis but for such a finding.

Respectfully submitted,



Paul E. Sullivan,  
Counsel to NSPAC

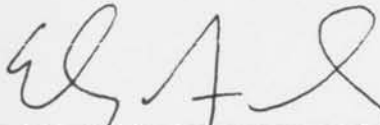
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**EXHIBIT A**

AMENDMENT TO AGREEMENT

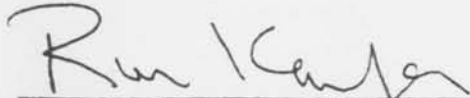
The Agreement between Response Dynamics, Inc. and National Security PAC entered into on the 7th day of April, 1986, a true and complete copy which is attached hereto and fully incorporated herein is amended by this document pursuant to Paragraph 11 of the aforementioned Agreement. The following provision to be amended, effective January 1, 1988:

1. Paragraph 4(a) is amended so as to delete "fifty dollars (\$50)" and insert in its place, thirty-five dollars (\$35).

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Elizabeth I. Fediay, Chairman  
National Security PAC

2/13/89  
Date



Ron Kanfer, President  
Response Dynamics, Inc.

2/13/89  
Date

cc: Chairman Aikens  
Vice Chairman Thomas  
Commissioner Elliott  
Commissioner McGarry  
Commissioner McDonald  
Commissioner Potter



BEFORE THE FEDERAL ELECTION COMMISSION

Democratic National Committee

v.

Response Dynamics, Inc. et al.

MUR 36378

RTB Response by Republican Challengers  
Committee

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FEDERAL ELECTION COMMISSION

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This response is filed pursuant to 2 U.S.C. §437g(a)(1), on behalf of Republican Challengers Committee, ("RCC" or "Respondent") in response to a complaint filed by the Democratic National Committee, ("DNC"), alleging the acceptance of illegal corporate contributions by RCC in violation of 2 U.S.C. §441b, by virtue of Respondent's failure to pay debts which it has outstanding to various vendors. ("Complaint") For the reasons stated below, Respondent contends that the debts were incurred as a result of an arms length business transaction and, notwithstanding various attempts to secure revenues from fundraising efforts, funds have not been obtained by which to pay off the RCC debt. The debts which are outstanding with the various vendors were undertaken pursuant to transactions which were in full compliance with the Federal Election Campaign Act of 1971, as amended, ("FECA") and the applicable Federal Election Regulations, ("Regulations") and as such, Respondent requests the Commission to make a finding of no reason to believe and close the file.

## Factual and Legal Analysis

- A. The single issue for the Commission's review is whether the RCC-RDI agreement was entered into on an arms-length basis, at the time it was executed in 1989 based upon the regulatory standards in place at that time.

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The Complaint is peppered with a substantial amount of negative rhetoric towards RCC and its chairman, Floyd Brown. However, once the rhetoric is dissected, the exclusive factual allegation tendered to the Commission centers solely upon the question of whether RCC entered into an arms length agreement between itself and its direct mail vendor, Response Dynamics Inc., ("RDI") and the various RDI subsidiary vendors providing collateral support services for the direct mail and telemarketing fundraising program. To this single allegation, the evidence and the history of the relationships clearly indicates that the agreement entered into between RCC and RDI was one of a arms length business transaction and as such, was not in violation of the FECA.

The agreement between RCC and RDI was entered into effective November 7, 1989 for a two-year period of time. The contract tendered by RDI to RCC was the standard pre-printed contract which RCC believed RDI tendered to all of its political and commercial clients. The fact that the document was pre-printed with generic provisions, clearly indicated to the Respondent that no special provisions were being tendered to RCC at the invitation of RDI. At the insistence of RCC, several minor adjustments were made to amend the agreement, including elimination of automatic increases in rates on an annual basis, and co-ownership of the list

generated from the direct mail received by RCC. With these two amendments, the agreement was signed in total between the two parties. No subsequent amendments were made to the agreement.

It must be emphasized that these amendments were undertaken at the request of RCC and based upon Mr. Brown's past dealings with direct mail houses, including RDI. The amendments which he made were certainly of a benefit to RCC from a business perspective, however, they were raised by RCC not tendered by RDI as an opportunity to circumvent standard provisions of the RDI contract.

Secondly, the Commission must keep in mind that the purpose of this Committee was to raise funds to support non-incumbent Republican candidates who were seeking to challenge Democrat incumbents or those seeking election to open seats in the United States Senate and House. At the time that this agreement was entered into, the Commission should recall there was a substantial anti-incumbent mood in the country and a substantial amount of press and political rhetoric regarding the lack of support of challenger candidates. On that premise, RCC believed that such a message would be very attractive to potential Republican contributors and as such would result in a successful direct mail fundraising program.

The obvious goal was to raise a substantial amount of funds over and above these direct mail costs for purposes of supporting Republican challenger candidates. The FEC disclosure reports of RCC clearly indicate the failure of the project on its face after several months. It is

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recognized in the industry that soliciting by direct mail for new committees can be a costly process, however, with the proper message, it is one which can be highly successful for both the direct mail house and the client political committee. In the case of RCC, the revenues were not generated to cover the expenses and little if any funds were used for purposes other than direct mail costs.

With the benefit of political hindsight or the typical "Monday morning quarterbacking" many groups, including the Commission may analyze this Respondents' activities in such a fashion as to indicate there was not an opportunity for the Committee to succeed politically. This case, however, must be viewed at the time that the agreement between RDI and RCC was entered into for purposes of proper analysis under the FECA. The mere fact that the Committee was successful or was a failure should be irrelevant to the adjudication of whether or not at the time the agreement was entered into, it was done so from an arms length standard business transaction perspective.

The Commission should note that in November of 1989, the present section 116 of the Regulations had not been enacted. Therefore, the standards upon which the case should be reviewed are the Regulations in effect of November of 1989. The basic regulatory provision dealing with the extensions of credit by a corporation to a political committee at that time stated,

A corporation may extend credit to a candidate, political committee or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to the extensions of credit to non-political debtors which are of a similar risk and size of obligation. (11 C.F.R. §114.10(a))

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The other principal reference to the extension of credit in the Regulations defined a contribution to include, "the extension of credit by any person for a length of time beyond normal business or trade practices. . ." (11 C.F.R. 100.7(a)(4))

Utilizing these regulatory standards, it is clear that in November of 1989 when RDI and RCC negotiated and entered into their direct mail fundraising contract, it was one which was made in the ordinary course of RDI's business and on terms which were substantially similar to other RDI agreements made with not only other political committees but non-political entities. This was the representation by RDI to RCC by virtue of the fact that it presented to RCC the pre-printed "boilerplate" RDI agreement. The amendments which were entered into by RDI at the request of RCC are truly issues which would not have impacted upon the present debt situation of the Committee.

The amendments which were requested by RCC were not items detrimental to the business activities of RDI. As a means of negotiating the contract, permitting these amendments to be included as consideration for obtaining the fundraising contract, is certainly not a judgment which, in the opinion of RCC, would have detrimentally impacted upon the RDI business. In fact nothing was amended regarding RDI's standard contract provision regarding the extension of credit included in the agreement.



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- B. The issue of whether or not RDI has taken sufficient steps to collect the RCC debt is one for which RCC has no impact or control and therefore, it should not be an element in determining RCC's alleged violation.

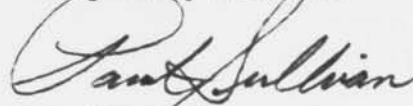
RCC entered into the RDI agreement with the knowledge that it was at that point one which was entered into and executed at an arms length transaction. RCC has little, if any, control as to the techniques or desires of RDI to pursue collection activities against the Committee. Therefore, the standards upon which the Commission views RCC and the standards that it employs for RDI regarding a potential violation are not similar. RCC could only have impact upon the contract at the time it was negotiated and executed. As thoroughly discussed above, the terms and conditions upon which the contract was entered into were clearly in the ordinary course of the business for RDI and the credit which was extended was at an arms length normal business trade practice standard. It is at that point in the analysis that the Commission must determine whether or not the credit was appropriately extended for purposes of the allegations against RCC. If there is a substantial debt, as is the case in this matter, RCC does not have the duty, (in fact it would be against its own business interest), to advocate that RDI pursue collection agencies or litigation as a means of collecting the debt outstanding. The issue of the size of the debt and the attempts by RDI to collect it are irrelevant as to the issues involving RCC.

The question of the resolution of the outstanding debt by RCC is an issue which the Commission may review when efforts are undertaken by RCC to resolve the debt if in fact RCC seeks debt settlement pursuant to 11 C.F.R §116.0 et. seq. Procedurally, that is the occasion

on which the RCC portion of the debt would be approved or denied. At this point however, the only issue outstanding relative to RCC as distinguished from RDI is the basis and the terms upon which the agreement was originally entered into on November of 1989. It is a narrow issue, but the only one which should be focused upon by the Commission in resolving this matter relative to RCC.

For the reasons stated above, the Respondents would request that the Commission make a finding of no reason to believe and close this file.

Respectfully submitted,



Paul E. Sullivan  
Counsel to RCC

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FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20461

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FIRST GENERAL COUNSEL'S REPORT

MURS 3578 and 3638

DATES COMPLAINTS RECEIVED BY OGC:

August 12, 1992 and October 5, 1992

DATES OF NOTIFICATIONS TO

RESPONDENTS: August 14, 1992 and  
October 8, 1992

STAFF MEMBER: Anne A. Weissenborn

COMPLAINANT: Democratic National Committee

RESPONDENTS: National Security Political Action Committee  
Elizabeth I. Fediay, as treasurer  
Republican Challengers Committee  
Robert E. Miller, Jr., as treasurer  
Presidential Victory Committee  
Robert E. Miller, Jr., as treasurer  
Mrs. Wesley West  
Floyd G. Brown  
Response Dynamics, Inc.  
Direct Response Data Management Service, Inc.  
American Telephone Marketing Group, Inc.  
The Best Lists, Inc.  
American Graphic Design  
Mid-America Printing Company, Inc.  
Fulfillment Management Services, Inc.

RELEVANT STATUTES: 2 U.S.C. § 433(b)(2)  
2 U.S.C. § 434(a)(1)  
2 U.S.C. § 434(b)  
2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(2)(A)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441b(a)  
11 C.F.R. § 100.7(a)(4)  
11 C.F.R. § 102.2(a)(1)(ii)  
11 C.F.R. § 102.2(b)  
11 C.F.R. § 104.3  
11 C.F.R. § 104.14(a)  
11 C.F.R. § 110.1(d)  
11 C.F.R. § 110.9  
11 C.F.R. § 114.2(a)  
11 C.F.R. § 116.3(b) & (c)

INTERNAL REPORTS CHECKED: National Security PAC  
Republican Challengers Committee  
Presidential Victory Committee  
Dun and Bradstreet Dunsprint Service

FEDERAL AGENCIES CHECKED: None

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**I. GENERATION OF MATTERS**

MUR 3578 was initiated by a complaint filed by the Democratic National Committee on August 12, 1992 against the Presidential Victory Committee ("PVC") and Robert E. Miller, Jr., as treasurer; the Republican Challengers Committee ("RCC") and Robert E. Miller, Jr., as treasurer; and Wesley West. MUR 3638 was initiated by a second complaint filed by the Democratic National Committee on October 5, 1992 against the RCC and the National Security Political Action Committee ("NSPAC"), as well as against Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc.

**II. SUMMARY OF ALLEGATIONS**

**A. MUR 3638**

The complaint in MUR 3638 alleges that NSPAC and the RCC have each been extended "commercially unreasonable" credit by the seven companies which are cited above and named as respondents. According to the complaint and attached materials, these allegedly improper extensions of credit began in 1988 in connection with direct mail and telemarketing fundraising services performed for NSPAC by the companies, and continued into 1992 in the form of like services performed for the RCC. The complainant alleges that credit extended to NSPAC and to the RCC "has not been extended in the ordinary course of business and the terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation."

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Further, the complaint alleges that "the Vendors have failed to make a commercially reasonable attempt to collect the debts from NSPAC." The complaint notes that Response Dynamics has filed suit against another customer to collect unpaid bills, but not against NSPAC or the RCC. The complaint concludes that NSPAC and the RCC have accepted illegal contributions from the vendors. While the complaint does not allege violations by the Presidential Victory Fund ("PVC"), it does assert that, given the complainant's allegations of affiliation between the RCC and the PVC in MUR 3578 (see below), extensions of credit by the vendors to the RCC have constituted indirect extensions to the PVC.

**B. MUR 3578**

The earlier complaint, which became MUR 3578, alleged that the PVC failed to disclose either contributions or debts and obligations, and/or accepted excessive or prohibited contributions in the form of extraordinary billing terms extended by the same vendors as those which are respondents in MUR 3638, as well as by the Washington Intelligence Bureau, in violation of 2 U.S.C. §§ 434(b), 441a(f), and 441b(a), and of 11 C.F.R. §§ 104.3, 110.9, and 114.2(a). This complaint did not cite the vendors as respondents.

The complaint also alleges that an individual, Wesley West of Houston, Texas, made contributions to the PVC totaling \$14,000 during the 1992 calendar year, resulting in violations of 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 110.1(d) by Mr. West and in violations of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9 by the PVC; that the PVC and the RCC are affiliated, a status which has not



been reported by these committees in violation of 2 U.S.C. § 433(b)(2) and of 11 C.F.R. §§ 102.2(a)(1)(ii) and 102.2(b); and that reports filed by the PVC in 1992 did not contain the signature of the committee's treasurer or assistant treasurer, in violation of 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.14.

### III. FACTUAL AND LEGAL ANALYSIS

#### A. INTRODUCTION

The principal issue addressed in this report is whether the vendor and committee respondents violated 2 U.S.C. § 441b and/or 2 U.S.C. § 441a by making and accepting in-kind contributions in the form of extensions of credit outside the ordinary course of business. The examination of this issue includes an analysis of past and present Commission regulations governing extensions of credit by corporate and non-corporate vendors, a summary of earlier matters under review which have dealt with this issue, a review of relevant advisory opinions, and the application of these precedents to the relationships of the respondent vendors and committees as reflected in written contracts and billing and payment patterns. The report also addresses the other issues of affiliation, excessive contributions, and reporting problems alleged by the complaints.

The report recommends that the Commission merge MUR 3578 and MUR 3638 and find reason to believe that NSPAC and the RCC violated 2 U.S.C. § 441b(a) by accepting excessive and prohibited contributions from vendors, based on evidence of patterns of continuous extensions of credit going beyond the ordinary course of business; and that the corporate vendors which extended this credit violated 2 U.S.C. § 441b(a). The report also recommends that the

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Commission find reason to believe that the PVC violated 2 U.S.C. § 441a(f) and § 434(a)(1) but take no further action in the latter regard; that NSPAC and the RCC violated 2 U.S.C. § 433(b)(2) by failing to report each other as affiliated committees; that the RCC and the PVC violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by failing to report each other as affiliated committees and by accepting excessive aggregated contributions; that Mrs. Wesley West violated 2 U.S.C. § 441a(a)(1)(C), but take no further action against this respondent; and that NSPAC and the PVC violated 2 U.S.C. § 434(c) by mis-reporting independent expenditure-related debts. Further, the report recommends that the Commission find no reason to believe that the PVC violated 2 U.S.C. § 434(b) by failing to report contributions or debts or 2 U.S.C. § 441b by accepting corporate contributions from vendors.

#### **B. BACKGROUND**

The following facts concerning the seven vendors and the three committees involved in the two matters addressed in this report are designed to provide background information currently in hand about the establishment, personnel, and relationships of these ten respondents. In addition, summaries are provided of previous matters under review which have involved these respondents, including one, MUR 2638, which addressed allegations of extensions of credit in 1988 by the respondent vendors to NSPAC outside the ordinary course of business.

##### **1. "The Companies"**

According to information received by the Commission in the context of closed MUR 2638 (see discussion below), and to the

response submitted by counsel for all of the corporate respondents in present MUR 3638 (Attachment 1), Response Dynamics, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., Fulfillment Management Services, Inc., Direct Response Data Management, Inc., and Mid-America Printing, Inc., and American Graphic Design were all founded, and are still owned, by David A. Kunko and Ronald Kanfer. The response to the complaint in MUR 3638 refers to these businesses collectively as "the Companies," as do the affidavits signed by Mr. Kunko and Mr. Kanfer in the present matters (Attachment 2) and in MUR 2638. According to these affidavits, Mr. Kunko is responsible for business and accounting functions, and Mr. Kanfer for creative matters.

Response Dynamics was incorporated in March, 1981 and The Best Lists in November of the same year. The year of American Telephone Marketing Group's incorporation was 1983; according to the Dun and Bradstreet Dunsprint Service, this corporation is no longer active, having merged with Response Dynamics in 1990 with Response Dynamics the surviving entity. Mid-America Printing's date of incorporation was December 29, 1986, while Fulfillment Management Service and Direct Response Data Management Service were both incorporated on June 19, 1987. Dun and Bradstreet lists these latter three companies, plus The Best Lists, as affiliates of Response Dynamics.

According to the Companies' response to the complaint in MUR 2638, American Graphic Design is a division of Response Dynamics; the Dunsprint Service does not list it as a separate corporate entity. For purposes of this report, American Graphic

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Design will be treated as a separate entity; however, the recommendations for Commission action will focus upon Response Dynamics as the appropriate respondent with regard to any violations as a result of American Graphic Design's activities. The same will be true with regard to American Telephone Marketing Group.

The Companies together perform direct mail, telemarketing, mailing list brokerage, letter production, filing, printing and inserting services. An eighth entity, Washington Intelligence Bureau, which is assertedly not affiliated with the respondent companies, has served as the escrow agent for contributions received as a result of solicitations undertaken on behalf of the Companies' clients.

## 2. National Security Political Action Committee

NSPAC filed a Statement of Organization with the Commission on April 24, 1986. Elizabeth I. Fediay was reported to be the secretary/treasurer and the committee's address as 3200 Morrison St., NW, Washington, DC. According to a portion of the Almanac of Federal PACs: 1990 attached to the complaint, NSPAC's advisory board included retired Admiral Thomas Moorer, retired Rear Admiral C.A. "Mack" Hill, and former United States Senator Jeremiah Denton.

NSPAC's first report, the 1986 June Monthly, showed \$30,720.76 in contributions received, \$2,809.72 in operating expenditures for salary payments and postage, and a debt of \$43,3112.15 owed American Telephone Marketing Group. In June 1986 the committee incurred another \$3,628.37 in debts owed American Telephone Marketing Group, but also made \$26,467.50 in payments to

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this vendor. The committee began making payments to Response Dynamics in July, 1986, and incurred debts owed The Best Lists beginning in August of that year. Mid-America Printing became a creditor as of March, 1987, as did American Graphic Design in July, Fulfillment Management in August and Direct Response Data Management Service in September, 1987. One or more of these seven companies continued to provide services and/or to submit invoices to NSPAC until June, 1991, and debts owed by this committee to these vendors continued to accumulate. As of the end of June, 1991, remaining aggregated debts owed these seven corporations by NSPAC totaled \$1,268,939.19, while reported cash on hand came to \$78.79.

NSPAC's reported activities from January 1986 through December 1991 resulted in the following aggregate sums:

<u>Year</u>	<u>Direct Contributions</u>	<u>Independent Expenditures</u> <sup>1</sup>	<u>Debts Owed Respondent Vendors At End of Year</u>	<u>Debts Owed Other Vendors</u>
1986	\$ 11,450	\$ 0	\$ 57,899.29	\$ 2,474.59 <sup>2</sup>
1987	21,600	217,173.33	102,722.64	43,638.83
1988	100,250	8,367,364.85 <sup>3</sup>	987,115.47	32,117.01
1989	12,150	172,576.09	1,211,512.50	12,656.03
1990	2,150	32,560.54	1,249,774.98	26,680.31
1991	-0-	-0-	1,268,939.19	23,924.91

According to sworn affidavits submitted in MUR 3069 (see further discussion below), Floyd G. Brown was one of the principal individuals involved with the NSPAC media program in 1988 in

1. The committee's independent expenditures were largely for fundraising costs and most were made to the respondent vendors.

2. This column includes debts owed Washington Intelligence Bureau.

3. This figure includes, for example, \$1,281,369.32 paid to Response Dynamics and \$1,135,183.51 paid to The Best Lists.



support of the candidacy of George Bush.<sup>4</sup> In MUR 3556 the complainant submitted a videotape allegedly distributed to potential contributors to the Presidential Victory Committee in 1992 in which Mr. Brown indicated that he had been the "political director" of NSPAC in 1988.

### 3. Republican Challengers Committee

The Republican Challengers Committee filed its Statement of Organization with the Commission on December 5, 1989. Its reported address was 1615 L Street, NW, Washington, DC, although the named custodian of records and treasurer was Robert E. Miller, Jr., 1200 Third Ave., San Diego, California. George Mason Bank in Fairfax, Virginia was listed as the committee's depository. On April 27, 1992, the RCC informed the Commission that its address had changed to 450 "A" Street, San Diego. As of the committee's 1994 April Monthly Report, Mr. Miller was still the treasurer.

According to an article published in the July 21, 1990 issue of the National Journal, which is attached to the complaint in MUR 3638, the RCC was "established" by Floyd Brown who has served as its chairman. In his sworn affidavit in MUR 3578 Mr. Brown confirms that he is the chairman of the RCC. The National Journal article also stated that "five members of the RCC board of directors are professional consultants and most [unnamed] were involved with NSPAC."

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4. Others included Elizabeth Fediay, Larry McCarthy, Craig Shirley, and Anthony Fabrizio.

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The RCC's third report of contributions and expenditures, the 1990 February Monthly Report, showed contributions received totaling \$1,495, \$253 in expenditures, and \$23,199.26 in debts owed, all but \$1,000 of the latter having been incurred during January. The reported creditors included:

Response Dynamics, Inc.	- \$13,229.15
Best Lists, Inc.	- 3,371.26
American Graphics Design	- 1,520.50
Direct Response Data Management	- 4.86

Mid-America Printing and Fulfillment Management were reported as additional creditors as of March and April, 1990. American Telephone Marketing Group became a creditor in July, 1990. As of May, 1992 the total debt owed these seven vendors by the RCC had reached \$95,027.77, the level at which it has remained to the present time; cash on hand at the end that same month was \$103.66.

RCC's reported activities from January 1990 through December 1992 resulted in the following aggregate sums:

<u>Year</u>	<u>Direct Contributions</u>	<u>Independent Expenditures</u>	<u>Debts Owed Respondent Vendors At End of Year</u>	<u>Debts Owed Other Vendors</u>
1990	\$4,000	\$ -0-	\$ 92,682.74	\$7,284.53 <sup>5</sup>
1991	-0-	-0-	91,949.07	11,731.28
1992	-0-	-0-	95,027.77	13,075.33

#### 4. Presidential Victory Committee

Shortly after the RCC filed its 1991 Year End Report showing debts totaling \$91,949.07 owed the seven vendors listed above, the PVC filed its Statement of Organization. The address listed for this committee was 1815 H Street, NW, Washington, DC; however,

5. As with NSPAC, this column includes debts owed the Washington Intelligence Bureau. Such debts reached \$2,692 in May, 1992 and have remained there.

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Robert Miller of Miller/Roos and Company was listed as treasurer, and his address was listed as 1200 Third Avenue, San Diego. On the Committee's reports Mr. Miller signed as Robert E. Miller, Jr. John A. Fitch was named as executive director and assistant treasurer at the Washington office. The committee's depository was George Mason Bank of Fairfax, Virginia. On March 20, 1992, an amendment to the Statement of Organization was filed to add David Bossie, 38 Ivy Street, SE, Washington, DC, as assistant treasurer. The committee's address was also changed to the same Ivy Street address, while its depository became First Interstate Bank of San Diego. More recently, on June 1, 1993, the committee filed an amended Statement of Organization with a new address, 450 "A" Street, San Diego, the same address as that of the RCC. As of the committee's 1994 April Monthly Report, Mr. Miller remained treasurer.

According to news articles attached to the complaint in MUR 3638 from the May 3, 1992 National Journal, the July 9, 1992 Washington Post, and the March 31, 1992 Philadelphia Inquirer, Floyd Brown "set up" and chaired the PVC. Mr. Brown has confirmed his position is chair in his affidavit in response to the complaint in MUR 3578.

The PVC's first monthly report, for February, 1992, showed \$27,304 in contributions received (\$20,704 unitemized), \$510.55 in expenditures and no debts owed. As of March 31, 1992 this committee's reported receipts for that month had risen to \$224,322.16, including \$58,750 in itemized and \$165,572.16 in unitemized contributions. In this same report the committee also

reported \$5,013.04 in operating expenses, \$229,684.15 in independent expenditures in support of "George Bush for President," and no debts owed. The independent expenditure figure for March included the following aggregate payments to the respondent vendors:

Response Dynamics, Inc	-	\$144,411.98
American Telemarketing Group	-	25,515.00
The Best Lists	-	36,308.32
American Graphic Design	-	1,988.50
Direct Response Data Management	-	427.28

For April, 1992, the PVC's reported independent expenditures involved additional large disbursements to the five vendors listed immediately above, as well as the following:

Mid America Printing	-	\$ 24,353.00
Fulfillment Management Service	-	2,123.97

The PVC also reported \$11,356.06 in debts accumulated in April, but none were owed to the seven respondent vendors.

During the remainder of 1992 the PVC's accumulated debt reached a high of \$40,6334.44, as reported in its Pre-General Report filed on October 22, 1992. Only one of this committee's creditors, Miller/Roos and Company of San Diego, was also continuously a creditor of the RCC. None of the seven vendor respondents in MUR 3638 are among those PVC creditors to which outstanding debts are owed.

The PVC's reported activities from January 1992 through December 1992 result in the following aggregate sums at the end of that year:

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<u>Year</u>	<u>Direct Contributions</u>	<u>Independent Expenditures</u> <sup>6</sup>	<u>Debts Owed Respondent Vendors At End of Year</u>	<u>Debts Owed Other Vendors</u>
1992	\$7,750	\$2,060,810.97	\$-0-	\$3,455.68

**5. Previous Matters Under Review Involving Respondents**

On January 11, 1989, in the context of MUR 2638, the Commission considered whether six of these same respondent companies<sup>7</sup> had extended credit to NSPAC outside the ordinary course of business during the 1987-88 election cycle. By the end of July of that year debts owed the six vendors totaled over \$866,000. The vendors argued that NSPAC was at that time current in its payments, with no invoice more than ninety days old. In recommending that the Commission find no reason to believe, the First General Counsel's Report dated November 7, 1988 stressed the facts that NSPAC had continued to report the debts as outstanding and to make substantial payments to each vendor. The Commission's determinations in MUR 2243 were also cited.<sup>8</sup> The Commission in

6. The committee's independent expenditures were largely for fundraising costs and and most were made to the respondent vendors.

7. Direct Response Data Management Service was not included.

8. In MUR 2243, which was later merged with MUR 2517, disclosure reports submitted by the respondent, the Bob Edgar for U.S. Senate Committee, indicated that between April 1, 1986 and July 11, 1986, no payments had been made on a \$61,350 debt owed the Kennedy Printing Company, even though reported cash on hand at the end of June totaled about \$106,000. The Office of the General Counsel recommended that the Commission find reason to believe that the committee and the vendor had violated 2 U.S.C. § 441b; however, on July 28, 1987, the Commission found no reason to believe in light of the facts that substantial payments had been made to the vendor, that the committee had reduced the debt significantly by mid-year, that the committee had continued to make payments, and that it had continued to report the debts outstanding to the Commission.



MUR 2638/MUR 2517 accepted the recommendations of the General Counsel with regard to the extension of credit issue.<sup>9</sup>

MUR 3069 originated as a complaint filed by the Ohio Democratic Party in May, 1990 against Bush-Quayle '88 and NSPAC alleging that these respondents had "coordinated, cooperated, or consulted" with regard to the "Willie Horton" television advertisements in 1988. On June 11, 1991, the Commission found reason to believe that NSPAC and Elizabeth I. Fediay, as treasurer, had violated 2 U.S.C. §§ 441a(a) and 434(b) and that Bush-Quayle '88 had violated 26 U.S.C. § 9003(b) and 2 U.S.C. § 434(b). On December 3, 1991 the Commission voted to take no further action against these respondents and to close the file.

MUR 3556 was initiated by a complaint filed by President George Bush, the Bush-Quayle '92 Primary Committee and Bush-Quayle '92 Compliance Committee, Inc., on July 13, 1992, against Floyd Brown and the PVC alleging that the respondents had, inter alia, misled contributors into believing that contributions to the PVC's Citizens for Bush program would go to the Bush campaign. The Commission, on March 23, 1993, found no reason to believe the PVC, Robert Miller, as treasurer, Floyd G. Brown, NSPAC and Elizabeth I. Fediay, as treasurer, had violated any provision of the Act or

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9. In this matter the Commission did find reason to believe that NSPAC had violated 2 U.S.C. §§ 441d(a) and 434(b)(6)(B)(i) and 11 C.F.R. § 104.14(d) with regard to the lack of disclaimers on posters and yard signs, and to the mis-reporting of the dates of certain contributions. The conciliation agreement signed on behalf of NSPAC and accepted by the Commission on October 1, 1990, contained the admission of a violation of 2 U.S.C. § 441d(a) and a \$6,000 civil penalty.

of the Commission's regulations based on the complaint in that matter.

**C. ALLEGED VIOLATIONS IN THE PRESENT MATTERS**

**1. Extensions of Credit to NSPAC and RCC**

The complaint in present MUR 3638 alleges that the respondent vendor companies have extended credit, first to NSPAC and then to the RCC, outside the ordinary course of business, and have not made commercially reasonable attempts to collect, resulting in contributions to these committees. As discussed above, in January, 1989, the Commission in MUR 2638 determined that there was no reason to believe that the extensions of credit made to NSPAC through at least July, 1988 by six of the seven vendor respondents in the present matter had violated 2 U.S.C.

§ 441b. The present report will focus upon the subsequent period of NSPAC activity. Following is a summary of the applicable law and an analysis of the allegations on the bases of the information contained in the complaint in MUR 3638, of the responses to the complaint, of reports filed by the committees with the Commission, and of Commission precedents found in advisory opinions and earlier matters under review concerning extensions of credit.

**a. The Law**

**i. The Act and Regulations**

The Act prohibits any corporation from making a contribution or expenditure in connection with any federal election, and any committee from accepting such a prohibited contribution. 2 U.S.C. § 441b.

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Prior to June, 1990, the Commission's regulations included within the definition of "contribution" extensions of credit to political committees if the extensions were for a "period of time beyond normal business or trade practice unless the creditor . . . made a commercially reasonable attempt to collect the debt."

Former 11 C.F.R. § 100.7(a)(4). Corporations were permitted to extend such credit if it were done in the corporation's ordinary course of business "and the terms [were] substantially similar to extensions made to non-political debtors which [were] of similar risk and size of obligation." Former 11 C.F.R. § 114.10.

These earlier regulations at Section 100.7 focused in large part upon the duration of extensions of credit. The Commission's revision of this section, which went into effect on June 27, 1990, went beyond the earlier emphasis upon timing to broader emphases upon the "ordinary course of business" and upon comparisons with treatment of non-political clients like those set out at former 11 C.F.R. § 114.10. Present 11 C.F.R. § 100.7(a)(4).

Further, the new regulations incorporated former Section 114.10 into a new 11 C.F.R. § 116.3. This new provision permits both unincorporated and incorporated commercial vendors to extend credit, provided that this is done "in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." 11 C.F.R. § 116.3(a) and (b). This new section also spells out the following factors to be considered in the Commission's analysis of whether a vendor has extended

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credit in its "ordinary course of business": (1) whether the vendor followed its own established procedures and past practice; (2) whether the vendor had received prompt and full payment in the past from the same candidate or committee; and (3) "[w]hether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry." 11 C.F.R. § 116.3(c)

ii. Advisory Opinions

In the area of direct mail and telephone solicitation programs, the Commission has indicated historically in its advisory opinions that vendors can advance the costs of such undertakings so long as they follow their ordinary business practice. In Advisory Opinion 1979-36 the Commission addressed the appropriateness of an agreement between a political committee and a direct mail fundraising company which provided that the company would advance start-up costs and then bill the client for its costs, plus a fee. The client committee was to be required to designate a maximum of three-quarters of the proceeds of the company's solicitation efforts to cover the company's costs and profits on a monthly basis. The agreement also provided, however, that, if a determination were made during the initial testing period that the mailing was going to be less successful than anticipated, all funds received would be made available to the direct mail firm. The advisory opinion request described this type of arrangement as "ordinary business practice" within the direct mail industry. The Commission concluded that if the

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proposed agreement, with its advance payments by the vendor and "limited liability on behalf of the Committee," represented "normal industry practice," and if it involved the type of credit extended in the particular vendor's ordinary course of business, the advances by the company would not be contributions.

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In more recent years the Commission's advisory opinions have limited such advances to circumstances in which the political committee involved assumes an appropriate share of the risk and in which the committee pays all costs calculated at the usual and normal rate charged in the ordinary course of business. Advisory Opinion 1989-21, issued on November 17, 1989, did not involve a direct mail contract per se;<sup>10</sup> however, in this opinion the Commission referred back to AO 1979-36, emphasizing that a basis for its determination in that earlier opinion had been the factor that "even if some contributions were successfully solicited by the direct mail company, the company might retain all of the funds and the committee might not benefit." This protection of the vendor was then contrasted with the facts set forth by the requester in AOR 1989-21 which involved the guaranteed receipt by a committee of contribution proceeds even if creditors putting up funds for campaign-related merchandise were not reimbursed. In this later opinion the Commission stressed the need for safeguards

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10. This advisory opinion request was submitted by a free lance artist doing business as a sole proprietorship. She wished to design merchandise to be used by candidates for fundraising. The plan involved the artist's providing certain goods and services prior to being paid. The Commission found that this arrangement would result in advances and thus contributions on behalf of any campaigns which would use her products.



for a vendor and stated: "[A]dvances . . . for a committee that would forego almost nothing, regardless of the degree of the success of [the] fundraising efforts, would constitute contributions."

In Advisory Opinions 1990-1 and 1990-14, the Commission addressed questions posed by companies which make 900 lines available to campaigns for fundraising. In these opinions the Commission emphasized the need for upfront deposits by the campaigns which would be sufficient to cover any losses on the parts of the vendors. In AO 1990-1 an important fact was that, in the event of a complete failure, the solicitation program at issue would be terminated to ensure that vendor losses did not exceed the initial deposit.

In Advisory Opinion 1990-19 the Commission considered the plans of a corporate vendor to assist a political committee in retiring its debts, including debts owed the same vendor. At issue was whether the proposed arrangement would result in in-kind contributions to the committee in violation of 2 U.S.C. § 441b. The vendor was owed approximately \$82,000 by the candidate committee. The vendor proposed to sell to the committee a variety of merchandise for which it would charge an amount higher than its own costs. The committee was to pay for the merchandise in advance and then resell it at a still higher price, using the excess to pay its debts, including those owed the company. The company would repurchase anything not sold by the committee at the price which the committee had first paid and market those items

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itself. The company stated that it would make a profit on each component transaction.

In its opinion in AO 1990-79, the Commission reiterated its concern that, no matter what the success of a fundraising effort, a vendor company providing goods or services could bear most or all of the risk and a committee could retain contributions while foregoing little. The Commission found that the requestor committee's payment in advance for the goods it would market and its meeting of the costs of such marketing would satisfy this concern.<sup>11</sup> The Commission conditioned its approval of the overall plan upon the vendor's offering the same terms to non-political customers and upon confirmation that the plan conformed with normal industry practice.

More recently, in Advisory Opinion 1991-18, the Commission set out a series of conditions under which it could approve an agreement between a state party and a telemarketing firm which would be advancing start-up costs. The conditions specified included the following:

1. The program would delineate specific periods of time within which the committee would be obligated to make full payment. If sufficient funds were not raised by means of the solicitations, other funds of the debtor committee would be used.
2. The distribution of contributions to the committee were to be based on good faith projections of expected contributions and earned commissions. These projections were not to be "altered to accommodate the Committee's need for

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11. The Commission determined that the repurchase provision could be a problem, unless the repurchase price was not higher than the price initially paid by the committee and was reduced by any administrative costs entailed in the initial sale and repurchase.

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an additional amount of funds at any given point, e.g., close to a general election."

3. The commissions retained by the vendor had to cover fully the costs incurred by that vendor plus a reasonable profit. Any shortfall would be paid at the end of the cycle "or immediately be due and owing by the Committee."

4. In the case of speculative solicitations, possible remedies would be a substantial payment in advance adequate to assure that expenses were covered and commissions paid.

The opinion concluded: "An unlawful loan or contribution . . . will occur if the conditions set out above are not met or if the program is continued with the knowledge that the Committee cannot pay for the services provided." Emphasis added.<sup>12</sup>

In Advisory Opinion 1991-32, issued on March 13, 1992, the Commission examined another plan submitted by a corporation involving the marketing of fundraising and campaign organization services to selected candidates. The Commission stated that the provision of up-front costs of list development would not be in violation of 2 U.S.C. § 441b if it were part of a commercial venture for profit. Emphasis was placed upon whether the corporation's charges would be "usual and normal." "[T]he Commission has conditionally approved novel methods of compensation for fundraising services based on whether the plan

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12. The program at issue was the committee's Current Donor Program. In the same opinion the Commission stated that it could not approve a second, more speculative program proposed by the same committee. This Prospecting Program did not involve short, defined periods for making full payments nor did it give the vendor recourse to the committee if contributions failed to cover the vendor's commissions. In this instance the Commission required as conditions for approval either evidence that such a program would be in the ordinary course of business or payment of a substantial advance by the committee.

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will entail the usual and normal charges and has applied the standard of normal industry practice." The Commission emphasized assurance by the requester "that the Advance Fee and the Percentage will ensure that [the vendor] will be compensated for the services provided to its clients and that, excluding start-up costs, revenues will exceed expenses." The Commission also stated, "[O]perations at a loss (particularly long term ones), waivers of salaries, or infusions of debt or equity capital to compensate for loss, or any combination of the three, would raise a rebuttable presumption that the company is not charging the usual and normal charge and would therefore be making contributions to its candidate-clients that are prohibited by 2 U.S.C. § 441b(a)."

iii. Previous Matters Under Review

MUR 2175, which was closed on August 25, 1988, involved, inter alia, the apparent acceptance of contributions from a media firm in the form of credit extended outside the ordinary course of business. The Commission's investigation determined that the initial extension of credit to the respondent committee had not been in the vendor's ordinary course of business because the vendor normally billed clients in advance and because the interest levied on late payments was considered a penalty, not remuneration. The Commission found probable cause to believe that the vendor had violated 2 U.S.C. § 441b and entered into a conciliation agreement with the respondent. The Commission successfully conciliated with the candidate committee on this and other issues prior to a finding of probable cause to believe.

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As discussed above, in early 1989 the Commission addressed, in MUR 2636, extensions of credit made to NSPAC by the same seven vendors as those in the present matter. Based upon the Commission's earlier decision in MUR 2243, the Office of General Counsel in MUR 2636 recommended, and the Commission found, no reason to believe that the vendors had extended credit "in an unacceptable manner." The factors considered were NSPAC's payments through least July, 1988, which were deemed current by the standards of the vendors (no more than ninety days old), and the committee's continued reporting of outstanding debts owed these vendors.

In MUR 3013, closed on March 4, 1992, the Commission addressed more than \$130,000 in debts owed a corporation by a political committee for fundraising and administrative costs. The direct mail effort involved had brought in only \$21,000, of which \$19,000 went to the corporate vendor. The committee had begun in 1986 with no cash on hand. The corporation paid for the initial administrative and fundraising expenses which were to be reimbursed from proceeds of the direct mail campaign. The Commission found reason to believe that a violation of 2 U.S.C. § 441b had resulted, based upon the amount advanced, the newly formed status of the committee resulting in no credit history, and the fact that the chairman of the corporation and the treasurer of the committee were the same person. During the deposition of this individual it was determined that the corporation had always required advance payments by other clients. The Commission found probable cause to believe and a conciliation agreement was signed.

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More recently, in MUR 3542, the Commission found no reason to believe that a consulting firm had made an illegal corporate contribution to a candidate committee in the form of services rendered prior to payment. The political consulting firm had been in business for several years, and in an industry in which it is not unusual for services to be supplied before the vendor bills the client. The client committee had made payments to the vendor as well as to other creditors; it did not appear that any more or less of an attempt to retire the debts owed others had been made than to retire the debt owed the consulting firm. According to the First General Counsel's Report, it appeared that the "relationship between the [committee] and the [consulting firm] is typical, normal and similar to other political clients . . . ."

**B. NSPAC/Vendor Relationships**

**i. Terms of Contracts**

NSPAC entered into contracts with two of the three then-existing respondent corporations in April, 1986.<sup>13</sup> First, on April 7, NSPAC signed a 5-year contract with Response Dynamics, as "the Agency," for carrying out a direct response fundraising program. The contract, which appears to have been the vendor's then standard, printed agreement, stated that: Response Dynamics would provide all layouts and copy for a NSPAC direct mail program; coordinate and develop the program; make arrangements with advertising media; and "negotiate and enter into agreements

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13. Based upon the incorporation dates listed on page 6, the only three respondent corporations in operation in early 1986 were Response Dynamics, The Best Lists and American Telephone Marketing Group.

on behalf of the Client for any special material and talent required and for all photography, models, special effects, layouts, artwork, printing and any necessary technical material for use in the direct response fundraising and advertising program." Response Dynamics was given the authority to select all vendors of such materials and services.

The contract further provided that Response Dynamics was to be reimbursed for all advertising costs and expenditures and for "the costs of packaging, shipping, taxes and duties, and telephone calls and telegrams incurred in connection with the performance of the Agreement." The company's compensation was to be \$50 for each thousand fundraising packages processed for mailing, 25% of the costs of telephone solicitations, \$2.00 per name for individually typed mailings to donors of \$50 or more, and commissions of 20% of the standard list rental charges and/or exchanges made directly to organizations and of 40% of list rentals made to brokers or agencies. The Best Lists was designated as an agent of Response Dynamics for the last purpose. The contract also provided for a yearly cost of living increase.

All solicitation returns were to be sent to "an independent third party" (Washington Intelligence Bureau) which would tabulate all returns, deposit the contributions into an "Escrow Fund," and make disbursements to the "direct mail suppliers" for bills outstanding before funds were transferred to NSPAC.<sup>14</sup> The

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14. Given the apparent non-existence in April, 1986 of four of the vendors later related to Response Dynamics, it is not clear from the language of the Response Dynamics/NSPAC agreement exactly what entities are covered by "direct mail suppliers."

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approvals of Response Dynamics and NSPAC were required for such disbursements. List rental receipts and commissions were to be placed in a separate bank account for use in paying commissions and list rental fees.

The contract provided that Response Dynamics was to render periodic billings which were to be paid "no later than on the due date stated therein." (The Companies' response in MUR 2638 stated that NSPAC was invoiced monthly.) If invoices from Response Dynamics or Best Lists were thirty days or more past due, Response Dynamics was authorized to have list rental income applied to those invoices. The agreement also contained the provision that "if invoices due a creditor(s) for services provided under this Agreement (including the Agency), remains [sic] unpaid ninety (90) or more days past the original invoice date, the Agency shall have the right to direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency for the purpose of tabulation, deposit and disbursement to the creditor(s)." Disbursements from the Escrow Account would be per the signature of an Agency representative. Further, the agreement stated that "any funds advanced by the Agency for postage, telephone vendors and other direct response fund raising services or materials shall be immediately reimbursed the Agency before any returns are disbursed to the [committee] and/or other parties." (The Companies' response in MUR 2638 stated that Response Dynamics was required to pay all postage expenses related to direct mail fundraising in advance; however, the written contract did not contain this provision.)

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In recognition of costs to be incurred by Response Dynamics in developing the program, NSPAC agreed to pay the company \$25,000 as liquidated damages for termination of the agreement prior to its expiration date. Upon termination of the agreement, all property and material produced by Response Dynamics was to be considered its property until final payment was made. NSPAC acknowledged the ownership by Response Dynamics of layouts, copy and artwork, and its co-ownership of any and all lists created pursuant to the agreement. Response Dynamics was to be entitled to unlimited use of such lists during and subsequent to the agreement, with no "payment of any nature whatsoever by the Agency to the Client."

On April 28, 1986, NSPAC entered into a separate letter of agreement with the American Telephone Marketing Group ("ATMG"), another of the seven vendor respondents, for telephone fundraising services, and into a three-party contract with the Washington Intelligence Bureau and ATMG for the provision of escrow services. The letter of agreement with ATMG provided that: the vendor would "perform the telemarketing services at the rate of \$37 per communicator hour; computer letters or mailgrams would be sent to all pledges at the option of ATMG for a cost of \$1.50 per message or \$3.00 per mailgram; "chase" letters could be sent to unproductive pledges at a cost of \$1.10 per letter; The Best Lists would serve as agent of both ATMG and NSPAC in acquiring calling lists; and a third party "Escrowee" would be employed to tabulate returns, deposit funds in an "Escrow Fund" and disburse returns to suppliers before transferring funds to NSPAC.

The three-party contract signed by NSPAC, ATMG, and the Washington Intelligence Bureau stated that: the Bureau would receive returns from the telephone fund raising program; NSPAC and ATMG would "mutually" present to the Bureau invoices of creditors, including their own, for payment by the Bureau; the Bureau would present bills for its services by the 10th of each month for which payment would be due within thirty days; and the Bureau could pay itself without authorization if such payment authorization had not been received by the due date. Compensation terms were to be fixed in a separate agreement which the Commission does not have.

No contracts or letters of agreement have been supplied with regard to the participation of Direct Response Data Management Service, The Best Lists, American Graphic Design, Mid-America Printing Company and Fulfillment Management Services in the NSPAC program. Based upon the Response Dynamics contract and NSPAC's reports, it appears that these companies dealt with NSPAC through Response Dynamics, issued their own invoices and were paid by means of separate checks; however, the terms of payment and other details are not presently available.

ii. Execution - Debts Incurred and Payments Made

Based upon NSPAC reports, between August 1, 1988 and June, 1991 the patterns of new debt incurred, payments made and net debt outstanding as regards the seven vendor respondents and, separately, other vendors, were as follows:

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Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
8/1-31/88	\$950,830	\$429,533	\$1,445,421	\$172,124	\$151,421	\$293,557
9/1-30/88	940,328	860,981	1,524,798	219,569	235,621	349,505
10/1-19/88	475,546	767,851	1,232,492	274,788	236,936	387,357
10/20-11/28/88	229,032	507,470	902,016 <sup>15</sup>	121,035	384,842	103,704
11/29-12/31/88	<b>87,522</b> <sup>16</sup>	20,729	987,115	46,312	<b>118,103</b>	31,914
1/1-31/89	<b>69,138</b>	80,090	976,162	30,171	2,510	59,575
2/1-28/89	<b>59,590</b>	24,000	1,011,758	13,752	8,677	64,649
3/1-31/89	<b>64,716</b>	43,645	1,032,868	27,835	27,550	64,934
4/1-30/89	19,992	10,600	1,042,138	13,800	5,777	72,958
5/1-31/89	16,638	-0-	1,058,800	15,285	7,056	81,173
6/1-30/89	<b>36,726</b>	2,820	1,092,683	2,877	<b>33,317</b>	50,741
7/1-31/89	<b>39,123</b>	20,040	1,112,753	4,832	<b>19,049</b>	36,724
8/1-31/89	15,883	-0-	1,128,636	4,349	9,003	32,070
9/1-30/89	<b>38,838</b>	1,686	1,165,774	4,160	<b>14,600</b>	21,630
10/1-31/89	13,756	520	1,174,017	3,584	8,360	16,654 <sup>17</sup>
11/1-30/89	8,088	4,921	1,182,182	5,008	2,460	19,203
12/1-31/89	<b>53,388</b>	24,058	1,211,512	2,059	8,636	12,656
1/1-31/90	<b>32,635</b>	44,373	1,199,774	5,877	8,284	16,813
2/1-28/90	<b>37,085</b>	21,825	1,215,034	8,733	1,704	23,842
3/1-31/90	8,407	12,919	1,210,522	1,993	2,348	23,488
4/1-30/90	18,831	5,000	1,224,353	2,062	870	24,680
5/1-31/90	10,011	10,929	1,223,434	2,991	5,386	22,284
6/1-30/90	21,151	9,203	1,235,383	1,116	2,936	20,464
7/1-31/90	7,569	16,388	1,226,564	8,194 <sup>18</sup>	4,074	24,584
8/1-31/90	10,792	10,518	1,226,841	848	5,840	19,592
9/1-30/90	5,209	4,778	1,227,269	3,383	1,184	21,790
10/1-17/90	6,543	3,481	1,230,330	709	-0-	22,500

15. Due to discrepancies between figures in the Committee's 1988 pre-election reports for debts owed at the end of the October 1-19 period and those in its 1988 post-election report for outstanding balances at the beginning of the October 20 - November 28 period, this total is not consistent with that which would result using the \$1,232,016 amount at the end of the preceding period. The Committee's report covering the October 1-19 period was apparently never amended as to debts owed, making it impossible to account for the approximately \$50,000 difference. (\$1,232,492 + \$229,032 - \$507,470 = \$954,054).

16. Certain figures have been indicated in bold type for emphasis.

17. One debt of \$200 disappeared from the Committee's reports between September and October. No expenditure related to this debt was reported.

18. \$5,000 of this figure represents new debt owed Wunder, Ryan, Cannon & Thelan for legal services.

Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
10/18-						
11/28/90	14,574	5,938	1,239,276	1,656	3,830	20,327
11/29-						
12/31/90	10,836	377	1,249,774	6,978	626	26,680
1/1-31/91	4,562	5,159	1,249,179	1,189	1,833	26,035
2/1-28/91	61,890	45,563	1,265,510	1,089	2,431	24,693
3/1-31/91	17,670	10,400	1,272,777	1,488	1,234	24,946
4/1-30/91	4,336	8,000	1,269,113	-0-	-0-	24,946
5/1-31/91	1,326	1,500	1,268,939	785	-0-	25,732
6/1-30/91	-0-	-0-	1,268,939	-0-	1,807	23,924

At the end of July, 1988, debt owed all seven vendors totaled \$874,125. Reported new debt incurred between August 1 and December 30 totaled \$2,683,258, which, when combined with the carry-over from July, brought the debt total for the latter part of 1988 to \$3,557,383. Reported payments from August through December came to \$2,586,564, for a payment rate of 73%.

By the end of 1988, NSPAC's total reported debts owed all vendors stood at \$1,019,028. The respondent vendors' respective shares were:

American Telephone Marketing Group-	\$167,761.75
Response Dynamics -	501,641.86
The Best Lists -	120,689.69
Mid-America Printing -	4,521.10
American Graphic Design -	3,766.65
Fulfillment Management Service -	129,927.45
Direct Response Data Management -	58,806.91

Total - \$987,115.41

Debts owed non-respondent vendors at the end of that year totaled \$31,914.

During 1989 NSPAC reported new debts totaling \$435,876 owed the respondent vendors, bringing total debts owed these vendors that year to \$1,422,991. Payments to these creditors totaled \$212,384.04, for a payment rate of 14.9%. By the end of the year

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NSPAC owed \$1,211,512 to these seven vendors. In that same year new debts owed by NSPAC to vendors other than the seven totaled \$127,907, which, when combined with debts carried over from 1988, brought total indebtedness that year to \$160,021. Payments to these non-respondent vendors came to \$146,970 for a payment rate of 91.8%, and left only about \$12,650 owed to five non-respondent vendors as of December 31.

In 1990 debts owed the respondent vendors continued to rise. New debts due these vendors that year totaled \$183,646. When combined with those carried over from 1989, debts owed during 1990 totaled \$1,395,158. Payments totaled only \$145,734, for a payment rate of 10.4% and left \$1,249,774 owing at the end of the year. During the same year reported new debts owed non-respondent vendors totaled \$46,251.68. Combined with those carried over, such debts in 1990 totaled \$58,901. Payments to these same vendors totaled \$37,087.50, for a payment rate of 63% and left \$26,680 owed at the end of the year.

In 1991 new debts owed the seven vendors totaled \$89,786.32, of which \$61,890.52 was incurred in February. Carry-over plus new debt equaled \$1,339,560. Payments to these vendors in 1991 totaled \$70,622.44, for a payment rate of 5%. Debt owed the remaining three non-respondent vendors increased by \$4,552.28 in 1991, on top of the \$26,680 from 1990, for a total of \$31,232. Payments to the same vendors totaled \$7,307.69, resulting in a payment rate of 23% and leaving total debt of \$23,924. Of the last amount \$21,791 was owed for legal fees.

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By the end of June, 1991, debts owed the respondent vendors had reached \$1,268,939.19 where they have remained. This total is divided as follows:

American Telephone Marketing Group	- \$ 340,562.40
Response Dynamics	- 413,702.78
The Best Lists	- 116,072.15
Mid-America Printing	- 54,252.25
American Graphic Design	- 12,957.03
Fulfillment Management Service	- 248,071.62
Direct Response Data Management	- <u>83,321.55</u>
Total	- \$1,268,939.19

As of June 30, 1993 total debts owed by NSPAC stood at \$1,294,152.97, including the above-cited \$1,268,939.19 owed the seven vendors, plus \$1,029.37 owed Washington Intelligence Bureau for "mail processing and caging," \$1,103.82 owed Saturn Corporation for "computer services," and \$23,080 owed Wunder, Ryan, Cannon & Thelan for "legal fees."

iii. Responses to Complaint

(a). Vendors

In their response to the complaint in MUR 3638, the seven vendors, "the Companies", cite the Commission's present regulations at 11 C.F.R. § 116.3(b) and (c), and argue that "the business relationship between the Companies and NSPAC met each of the standards set forth in the Commission's regulations." They state:

The Companies followed their established procedures and practices in determining to go forward with their business arrangements with NSPAC. In past dealings with principals of NSPAC, they had received prompt payment in full. The underlying agreement between the parties conformed to usual and normal practice in the industry. The contract was a pre-printed standard form agreement regularly used by the Companies. . . . The contract is substantially identical to contracts executed by

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all of the company's clients. Pursuant to the contract, NSPAC agreed to be billed at the Companies' standard rates. . . . The contract also called for NSPAC to pay according to the Companies standard terms of payment.

It is further asserted that the Companies "received prompt payment from NSPAC on its invoices through October 1988" and that "the relationship between the Companies and NSPAC was an arm's-length commercial transaction that was a financial success for these Companies in spite of the currently outstanding debt."

In response to the allegation in the complaint that the amount of debt owed the seven vendors is "disproportionate to the size of the vendors and to the political committees involved", it is asserted that NSPAC had receipts and expenditures of more than \$10.27 million. "NSPAC's total unpaid debt to the Companies is approximately \$1.3 million, or less than 15% of gross income for the total project. NSPAC's debt to total income ratio for this project is better than the Companies' average client debt to total income ratio."

Citing MUR 216/239 (1976), the Companies argue that courts "will not intervene in business decisions motivated by a rational purpose and made in good faith."

Surely no business purpose is more rational than the Companies' purpose in entering into a contractual relationship with NSPAC: the realization of profit. This relationship required the Companies to take the risk that they would be forced to write off a large debt if NSPAC became insolvent. The Companies were willing to take that risk in return for the possibility that they would realize significant profits from the contract. That the Companies' position was reasonable is borne out by the profits they ultimately did realize, profits that dramatically outweigh the loss resulting from the Companies' failure to collect the NSPAC debt. . . . The Complainant has

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made no showing that the Companies acted with any motive other than a desire to earn a profit. The Companies have earned more net income from work performed on this one NSPAC account than any other account they have handled within the same time frame.

Finally, as to income generated from this contract, counsel argue that as a result of the Companies co-ownership of the mailing lists created pursuant to the agreement with NSPAC, they have continued to earn "significant net dollars" and expect to do so "over the next four years." "List rental income earned from the Americans for Bush mailing list of 128,000 names and new accounts produced as a result of publicity over this project has more than offset all \$1.3 million owed to the Companies."

With regard to attempts to collect on the debts owed, the Companies argue that the Commission's regulations require the filing of suit against debtors only if it is commercially reasonable to do so. "Presumably, commercial reasonableness does not require a business to expend a substantial sum of money in pursuit of a debt that may not be possible to collect. . . . Because NSPAC is insolvent, any attempt by the Companies to collect the debt owed to them would likely be fruitless."

The Companies also state:

Direct mail debts and the Companies' fees are generally paid from money raised through programs conducted by them on behalf of their client. The Companies vigorously pursue fundraising programs to enable their clients to pay all bills. When fundraising projects consistently lose money, the Companies may determine that it is not possible to net any additional money to pay bills and therefore they may decide to cease new work for a client rather than continue to lose money on additional mailings. If NSPAC could raise the funds to pay their debts, the Companies would certainly seek action by NSPAC.

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It is clear from the Companies' experience and expertise that such a fundraising effort would fail and further increase NSPAC's debt to the Companies.

According to the virtually identical affidavits submitted by Mr. Kunko and Mr. Kanfer, NSPAC paid the vendors consistently until November, 1988. They state:

In October a business decision was made to mail approximately 3 million letters on previously tested lists. The projection indicated that the mailing would net more than \$700,000. The actual results of the mailings were a loss of about \$400,000. The difference between the projected gain and the actual loss on this mailing was over 1 million dollars and nearly accounts for the entire debt that NSPAC has with RDI and related companies.

The affidavits also restate counsel's assertions that the Companies earned more income from NSPAC's Americans for Bush program than from any other account within the same time frame and that the mailing list derived from that program "continues to earn significant net dollars for the Companies and is expected to continue earning income over the next four years."

(b). NSPAC

NSPAC argues in its response to the complaint in MUR 3638 (Attachment 3) that "[t]he contract executed by NSPAC with [Response Dynamics ("RDI")] was the standard contract, as presented by RDI, represented to be utilized for all of RDI's political clients." This respondent also states:

At no time preceding 1989, did NSPAC seek to negotiate any special provisions in the contract nor was any extraordinary provision made in the contract. . . .

In February of 1989, the sole amendment to that contract was agreed to between NSPAC and RDI . . . . That single amendment to the April, 1986

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contract amended [paragraph]4(A) to reduce the mailing list charges from \$50.00 per thousand to \$35.00 per thousand.

The response states that the purpose of this amendment was to permit NSPAC to generate more revenue through more mail for purpose of paying its debts. "Virtually all net proceeds NSPAC received from that point forward were for purposes of debt retirement not new contributions or projects."

In its analysis NSPAC emphasizes that the contract between Response Dynamics and NSPAC was entered into before the promulgation in 1990 of the Commission's present regulations governing extensions of credit by corporations. Counsel argues that the regulations in effect in 1986 required that credit be extended "in the ordinary course of the corporation's business" and that "it was NSPAC's understanding that the contract that was being tendered to it for services by RDI was the contract used by RDI in the ordinary course of its business and therefore, no inordinate credit extension was provided to NSPAC." 19

Regarding the accumulation of debt owed the vendors by NSPAC, it is stated:

NSPAC's attempts subsequent to the 1988 election to continue fundraising for purposes of retiring the 1988 debt were a substantial cause for the debt incurred as represented by the present NSPAC FEC report. This on its face, demonstrates NSPAC's attempt to conduct ongoing fundraising efforts in an attempt to reduce or retire the debt. An analysis of those reports during the last quarter of 1988 and 1989 will demonstrate that these

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19. Counsel refers to regulations "revised as of July 1, 1987." This is apparently a mis-typed reference to the Commission's 1977 regulations.

efforts concluded in a net loss to NSPAC. It was for that very reason that NSPAC has elected to cease all attempts at direct mail fundraising because it merely was adding to the outstanding debt rather than netting out funds which could be used to retire the debt.

NSPAC urges that the Commission "bifurcate" its analysis, looking first to the original extension of credit and then to NSPAC's attempts to retire the debt owed the respondent vendors. As stated above, counsel argues that the original extension was "an arm's length standard business fundraising contract." Regarding retirement of the debt, this respondent argues that continuous efforts were made until "it was evident that it was a net loss proposition." It also states,

[F]or purposes of this Complaint, the present debt is not an issue, and should neither be addressed nor should it impact upon the Commission's determination for dismissing the allegations in the Complaint. Those determinations will be properly undertaken at such time that NSPAC seeks, if ever, a debt forgiveness or settlement agreement with RDI. Under the present regulations, the Commission is well aware that debt settlements or debt forgiveness must come before the Commission for its approval.

NSPAC concludes by asking that the Commission find that "no improper extension of credit was made by RDI to NSPAC and therefore, no violations of the Act occurred."

c. RCC/Vendor Relationships

i. Terms of Contract

On November 7, 1989, prior to its registration with the Commission on December 5 of that year, the RCC entered into a two-year contract with Response Dynamics, Inc. for fundraising services. The contract appears to have been based on the same

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standard form as the NSPAC contract; however, the RCC negotiated the deletion of the apparently otherwise standard provisions regarding the receipt by Response Dynamics of any list rental commissions, co-ownership of any lists generated, and unlimited use of such lists by the vendor. Otherwise, compensation of the vendor was to be upon the same bases as those in the NSPAC contract, namely \$50.00 per one thousand fundraising packages processed, 25% of telephone solicitation costs, and \$2.00 per name for individually typed mailings to high dollar (\$50 or above) donors. The standard cost of living provision was eliminated.

As in the NSPAC contract, Response Dynamics was to render periodic billings to the RCC, which were to be paid by the due date on the invoice. Unlike the NSPAC contract, however, there was no provision for access to list rental income as an alternative source of payment. The agreement did include the provision in the NSPAC contract that, in the event of invoices being overdue by ninety or more days, RDI could direct all future returns to an escrow account to which it would have access.

The amount of \$25,000 in liquidated damages for early termination appeared in the RCC contract, as did the provision that upon termination all property and material would become that of the company until all payments were made by the committee. The company was to have sole ownership of all copy, layouts and artwork.

ii. Execution - Debts Incurred and Payments Made

Between January 1, 1990 and June 30, 1992 the pattern of debts incurred by the RCC, payments made and net debt outstanding

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as regards the seven vendors in comparison with other vendors was as follows:

Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
1/1-31/90				\$1,000	\$ -0-	\$ 1,000
2/1-28/90	\$18,606	-0-	\$18,606	4,073	-0-	5,073
3/1-31/90	4,903	16,098	6,930	1,707	1,135	5,646
4/1-30/90	48,797	3,984	51,743	7,100	2,938	9,808
5/1-31/90	23,324	12,912	62,156	9,963	2,200	17,571
6/1-30/90	4,859	15,468	51,546	1,941	2,783	16,729
7/1-31/90	71,695	9,612	113,629	6,403	6,802	16,330
8/1-31/90	67,542	57,756	123,415	800	8,342	8,788
9/1-30/90	27,479	48,287	102,606	5,833	988	13,634
10/1-17/90	14,683	14,414	102,875	268	-0-	13,902
11/26/90	1,632	26,673	77,834	1,240	3,974	8,918
11/27-						
12/31/90	27,603	12,755	92,682	2,608	1,317	10,209
1/1-31/91	15,929	18,214	90,397	1,859	2,500	9,569
2/1-28/91	18,312	21,655	87,054	953	-0-	10,523
3/1-31/91	9,297	10,274	86,077	1,101	1,552	10,072
4/1-30/91	5,724	10,314	81,487	289	101	10,260
5/1-31/91	3,718	-0-	85,206	1,130	724	10,666
6/1-30/91	9,575	6,266	88,516	325	2,054	8,937
7/1-31/91	13,626	16,105	84,327	3,901	-0-	12,839
8/1-31/91	12,434	8,504	89,966	792	-0-	13,631
9/1-30/91	8,523	9,189	89,300	631	3,684	10,578
10/1-31/91	3,292	1,215	91,377	585	280	10,883
11/1-30/91	85	-0-	91,463	211	-0-	11,095
12/1-31/91	485	-0-	91,949	636	-0-	11,731
1/1-31/92	1,058	-0-	93,000	1,715 <sup>20</sup>	-0-	13,446
2/1-29/92	824	-0-	93,824	136	-0-	13,582
3/1-31/92	1,385	-0-	94,209	48	300	13,330
4/1-30/92	-0-	-0-	94,209	-0-	-0-	13,330
5/1-31/92	818	-0-	95,027	108	-0-	13,438
6/1-30/92	-0-	-0-	95,027	-0-	364	13,074

During 1990 the RCC reported new debts owed the vendor respondents totaling \$311,123. Payments that year totaled \$217,959 for a payment rate of 70%. At the end of the year \$92,682 was owed these seven vendors. In the same year new debts owed for services rendered by non-respondent vendors totaled \$42,936 and payments totaled \$30,479, for payment rate of 71%.

20. This amount was owed Miller/Roos.

New debt accumulated in 1991 as owed to the respondent vendors totaled \$101,000; when added to the amount carried over from 1990 debts totaled \$193,682. Payments totaled \$101,736 for a payment rate of 53%. New debt owed non-respondent vendors that year came to \$12,413. A total of \$10,209 in debts owed these latter vendors had been carried over from 1990, bringing total debt in 1991 to \$22,622. Payments equaled \$10,895, for a payment rate of 48%.

At the end of the contract period in October, 1991, the RCC's total debts owed all vendors stood at \$102,260. Of this figure \$91,377 was owed the seven vendors. This included:

American Telephone Marketing Group	-	\$20,955.00
Response Dynamics	-	16,648.10
The Best Lists	-	2,455.62
Mid-America Printing	-	8,785.18
American Graphics Design	-	4,797.00
Fulfillment Management	-	18,224.37
Direct Response Data	-	<u>19,512.68</u>

\$91,377.95

By June, 1992 the amount owed these seven vendors had risen to \$95,027, or by only \$3,890, a figure which would appear to indicate that no significant new projects were undertaken after October, 1991. Their respective shares were:

American Telephone Marketing Group	-	\$20,955.00
Response Dynamics	-	16,694.35
The Best Lists	-	3,219.62
Mid-America Printing	-	8,785.18
American Graphic Design	-	4,797.00
Fulfillment Management Service	-	18,298.87
Direct Response Data Management	-	<u>22,277.75</u>

Total - \$95,027.77

The amounts owed other vendors totaled \$13,075.33. No payments were made to any of these vendors in 1992 or 1993; thus, as of November, 1993, all of the debts remained unchanged.

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iii. Responses to Complaint

(a). Vendors

The vendors have stated that the agreement between the Companies and the RCC was a "standard pre-printed agreement" and that the fee charged was the "standard rate of \$50.000 pr thousand packages mailed." They go on to assert:

After about a year of standard direct mail prospect package testing and remailings to active donors of RCC, the Companies determined that the project did not have the potential that the Companies originally hoped. Based on the results of all work performed by the Companies for RCC, the Companies made a business decision to temporarily reduce the level of mail volume until the political fundraising climate improved.

(Attachment 1, page 5.)

The fact that the RCC insisted upon eliminating certain portions of the standard Response Dynamics contract regarding list rental income and list co-ownership by that vendor is not addressed by the vendors. Nor do they explain what appear to have been extensions of credit well beyond a year.

(b). RCC

The RCC contends that the debts owed by the RCC to the seven vendors "were incurred as a result of an arms length business transaction and, notwithstanding various attempts to secure revenues from fundraising efforts, funds have not been obtained by which to pay off the RCC debts." (Attachment 4). This respondent states that the RCC was formed to support non-incumbent Republican candidates for the U.S. Senate and House of Representatives. Although the RCC believed that this message "would be very attractive to potential Republican contributors," it was seen as a

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failure after several months. "[T]he revenues were not generated to cover expenses and little if any funds were used for purposes other than direct mail costs."<sup>21</sup>

The RCC asserts that the standard by which the contract should be judged is whether it was an arms length transaction at the time it was executed, not whether the contract resulted in a successful fundraising project. It argues that it was the Commission's former regulations which were in effect in November, 1989 when the agreement was signed, and it is those regulations which should be applied in the present matter.

Relying entirely upon the terms of the pre-1990 regulations, the RCC asserts that the agreement was "made in the ordinary course of RDI's business and on terms which were substantially similar to other RDI agreements made with not only other political committees but non-political entities." It further asserts that the amendments requested by RCC involved issues "which would not have impacted upon the present debt situation of the Committee," and that they "were not items detrimental to the business activities of RDI." Finally, counsel argues that the RCC had no control over whether the vendors took sufficient steps to collect the debts. "The issue of the size of the debt and the attempts by RDI to collect it are irrelevant to the issues involving RCC." Collection effort would be a consideration only if the RCC sought debt settlement approval.

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21. As is noted on page 10 above, the RCC reported only \$4,000 in direct contributions to candidates in 1990, no direct contributions in subsequent years, and no independent expenditures.

**d. Analysis**

For purposes of analysis, this Office will address separately the extensions of credit made by the respondent vendors to NSPAC and the RCC prior to June 27, 1990, and those made after that date. As outlined above, the Commission's revised regulations governing extensions of credit became effective as of June 27, 1990, thus changing somewhat for the post-June, 1990 period the factors to be considered by the Commission in determining whether or not a credit extension to a political committee results in a corporate or excessive contribution. Guidance as to standards is also to be found in the advisory opinions discussed above which were issued both before and after June 27, 1990, as well as in matters under review on the public record as of that date and later.

**i. Pre-June 27, 1990**

**(a). Standards to be applied**

The Commission regulations in force until mid-June, 1990 required anyone extending credit to a political committee to do so for no greater length of time than was normal business or trade practice, unless that person had made commercially reasonable attempts to collect. Otherwise, a contribution would result. (Former 11 C.F.R. § 100.7(a)(4)). These earlier regulations governing corporate activity also required that commercial vendors extend credit only in the ordinary course of business and on terms similar to those extended non-political clients. (Former C.F.R. § 114.10.) Pre-June, 1990 advisory opinions which addressed extensions of credit for direct-mail fundraising and telephone

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solicitations determined that so long as such extensions for start-up costs were normal industry practice and ordinarily extended by the particular vendor involved, they would not be considered contributions. However, by late 1989 the Commission was also emphasizing that agreements between vendors and political committees should have built-in safeguards of the vendors' financial interests. (AO 1989-21). This concern was restated in AO 1990-1 issued on March 1, 1990.

(b). Application to NSPAC and Companies

As stated above, in 1986 NSPAC entered into written agreements with American Telephone Marketing Group, Washington Intelligence Bureau, and Response Dynamics for telephone and direct mail fundraising services. The three agreements provided for payment upon receipt of invoices. The funds for such payments were to come from an "Escrow Fund" into which proceeds from the fundraising activities would be placed. None of these agreements provided for advance payments by the committee. The agreement with Response Dynamics also granted that vendor the right of co-ownership of any list created pursuant to the agreement and the right to use that list without charge.

(1). The Contracts

The NSPAC agreement with Response Dynamics appears to have been the vendor's standard form contract. The vendors state that this agreement was "substantially identical to contracts executed by all of the company's clients" and that payment was to be "according to the Companies standard terms of payment." More specifically, the Response Dynamics agreement provided that this

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vendor was to submit bills "from time to time" which were to be paid "no later than on the due date stated therein." If invoices remained unpaid for more than thirty days past the due date, Response Dynamics was authorized to use the Committee's list rental income to pay outstanding invoices from itself and The Best Lists. The agreement did not contain provisions for the timing of payments to other vendors to be selected by Response Dynamics, nor for alternative sources of such payments.

The second and third written agreements supplied by the respondents, both dated April 28, 1986, appear to have been individually prepared. The letter of agreement with American Telephone Marketing did not provide for the submission of invoices on any specific schedule, but required payment no later than 30 days after the invoice date. Invoices were to be paid directly from the Escrow Fund. By comparison, the contract with the Washington Intelligence Bureau provided that the vendor was to "render billings . . . by the 10th day of each month for services rendered in the preceding month and payment shall be due no later than thirty days from the date of such billing." The amount of compensation to be paid the Bureau was to be fixed by means of another agreement.

The respondent vendors acknowledge that the contracts with NSPAC "required the Companies to take the risk that they would be forced to write off a large debt if NSPAC became insolvent." There was, to be sure, some protection built into the contract with Response Dynamics as follows:

1. The Escrowee was to disburse returns to suppliers before transferring funds to the committee.
2. The required payment by NSPAC of \$25,000 as liquidated damages if the agreement terminated before the expiration date.
3. The right to list rental income if invoices were outstanding for more than thirty days.
4. The right of the Agency to "direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency" if invoices due a creditor for services provided per the agreement were unpaid ninety days after the original invoice date. The Agency would have the right to choose the signatory on the account.
5. "Unlimited use" without payment of any list generated under the agreement.

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NSPAC's agreement with Response Dynamics was open ended as to the quantity of services to be performed within the five year period of the contract. There was no specification of how many direct mail programs were to be undertaken or what the size of those programs would be. Based upon the sizes of the transactions between the various respondent vendors and NSPAC during the first two years and upon the figure of \$25,000 for liquidated damages built into the agreement, it appears that none of the parties anticipated at the beginning the significant growth in the size of the NSPAC programs which began in the third contract year.

(2). Execution

In their response in MUR 2638 dated July, 1988, the vendors asserted that NSPAC was then current on its invoices and that no debt was older than ninety days.

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(3). Vendor Safeguards

Another issue is whether the safeguards built into the contracts, even if adequate at the beginning of the contract period, remained sufficient to protect the interests of the vendors. It is the position of this Office that by mid-1989, if not earlier, such protections of Response Dynamic and American Telephone Marketing as were built into their contracts with NSPAC, and any protection of, at least, The Best Lists through the Response Dynamics contract, had become grossly inadequate to cover the debts which had grown throughout the life of the contracts. These protections did not begin to cover these creditors with regard to any additional services rendered after March, 1989 or so. The only actual amendment of the Response Dynamics contract as debts mounted involved a lowering of mailing list charges from \$50.00 to \$35.00 per thousand, not additions to vendor safeguards.

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Nor is there any evidence on the record to indicate that Mid-America Printing, Fulfillment Management, Direct Response Data and American Graphic Design were shielded at all and at any time from bearing fully the financial risks involved in their shares of the NSPAC programs. In summary, it is evident that the respondent vendors assumed all of the risk of any and all additional extensions of credit at the least after early 1989.

Further, it does not appear that the later extensions of credit in 1989 and early 1990 were aimed solely at reducing the debts owed creditors. As can be seen from the chart on page 8 above, in 1989 NSPAC made \$12,150 in direct contributions to candidates. These contributions were made in February (\$500), May (\$2,000), June (\$1,000), July (\$1,000), September (\$3,750), October (\$1,800) and November (\$2,100).

In addition, beginning in May, 1989, the funds which were raised by NSPAC and not given out as contributions were used to pay down debts owed non-respondent vendors to a greater extent than they were used against the debts owed the respondent vendors. As can be seen on the chart on page 29, in May of that year no payments were made to any of the respondent vendors even though debts owed these companies totaled more than \$1,000,000, while over \$7,000 went to other companies to which a total of only about \$88,000 was owed. In June the seven companies received a total of \$2,820, while \$32,817 went to others. In August no payments were made to the seven companies while \$9,000 went to other non-respondent vendors. This pattern continued through the rest of 1989 and the first half of 1990.

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Beginning in 1989 the year-by-year payment rates also show this favoritism toward the non-respondent vendors. In 1989 the respondent vendors were paid at a rate of 14.9% versus 91.8% for non-respondents. For the whole of 1990 the rate for respondent vendors was 10.4% while that for non-respondent vendors was 63%; the rates for the period of January-June, 1990 were 8% and 60% respectively. Thus, it appears that both Response Dynamics and NSPAC, as the authorizers of expenditures, favored vendors not related to the former when reducing debts, indicating that Response Dynamics and its affiliated companies were willing to carry the committee with regard to debts already owed by not claiming equitable portions of committee receipts as their due, in addition to permitting additions to those debts as described above.

Counsel for the vendors argue that their use of the mailing list generated by the NSPAC program has more than made up for NSPAC's failure to pay vendor charges in full. The contract provision permitting this use did not, however, link such use and profits derived therefrom to payments due on the contract itself. The right to list use was stated in absolute form and therefore represented a form of compensation over and above payments on invoices for services rendered. Thus, the right to list use did not constitute protection for the vendors against the committee's

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failure to make full payments of invoiced charges.<sup>22</sup>

It is the position of the Office of the General Counsel that the extensions of credit made by the respondent vendors to NSPAC between April, 1989 and June, 1990 did not meet the Commission's requirements, and thus resulted in violations of 2 U.S.C. § 441b(a) by those vendors, including Response Dynamics in its own right, Response Dynamics doing business as American Graphic Design, and Response Dynamics as the surviving entity after merger with American Telephone Marketing Group. These extensions of credit also resulted in violations of 2 U.S.C. § 441b(a) by NSPAC.

(c). Application to RCC and Companies

(1). Relevance of NSPAC Contract Experience

Knowledge derived from prior dealings with a customer was not listed specifically in the regulations as a component of "ordinary course of business" until the revision of those regulations in June, 1990. Nevertheless, prior to that date such knowledge would have been relevant to a vendor's decisions regarding whether or not to extend credit.

The RCC registered as a political committee with the Commission on December 5, 1989. The complainant in MUR 3638 asserts that certain of individuals on the board of directors of the RCC in large part were the same as those on the NSPAC board of directors. The chairman of the RCC, Floyd G. Brown, was active as

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22. This position is supported by the argument presented by counsel for the RCC that the deletion of a similar provision from the later RCC contract with Response Dynamics had no impact upon the debts owed the vendors by his client. See discussion at page 54 below.

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a consultant with NSPAC in 1988. The principal vendors selected to serve the RCC beginning in 1990 were the same as those against which high levels of debt had been accumulated by NSPAC during the period immediately preceding the RCC contract. Thus, as to the RCC activity between December, 1989 and June 27, 1990, it is appropriate to examine whether the solicitation failures of the earlier organization in late 1988 and 1989 should have served as warnings to the respondent vendors with regard to their dealings with the RCC and, more fundamentally, to compare the provisions of the contracts entered into by the two committees.

(2). NSPAC failure

The principal activities undertaken by NSPAC after its creation in 1986 were its independent expenditure program on behalf of the presidential campaign of George Bush in 1988, plus, to a lesser extent, programs in support of at least seven candidates for the U.S. Senate in the same 1987-88 cycle; its fundraising expenditures in 1989 and 1990 were for the most part reported as being on behalf of the 1988 Bush campaign. The RCC, on the other hand, was created to assist the senatorial campaigns of Republican candidates in 1990. The \$4,000 which the RCC contributed went to 1990 Congressional candidates, not to the Bush campaign or to other 1988 candidates.

Thus, there were differences in the candidates in support of whom NSPAC and the RCC solicited contributions, with possible implications for RCC optimism in early 1990 despite NSPAC's then recent failures. Nevertheless, given the apparent overlaps in leadership between NSPAC and the RCC, considerations as to the

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credit worthiness of the RCC should have included the fundraising difficulties which NSPAC, under that leadership, had begun to suffer in late 1988. These difficulties continued into 1989 and 1990, compounded by new, but unsuccessful, attempts to raise sufficient funds in June and July, September and December, 1989 and in January and February, 1990 to meet NSPAC's debts. The RCC began its solicitations in January or February, 1990; at that time NSPAC was carrying over \$1,000,000 in debt to the seven vendors, as it had for the past year. Any creditor still involved with NSPAC would have had ample reason to question whether its "ordinary" course of business should include granting credit to the new RCC.

(3). The Contracts

The written agreement between Response Dynamics and the RCC designated the former as the committee's agent in its relationship with other vendors. As with the NSPAC contract, it is not clear whether separate agreements were negotiated with other respondent vendors, even though all had come into existence by November, 1989. The RCC agreement provided for payment of vendors upon submission of invoices, with payment to come from an Escrow Fund consisting of funds received in response to solicitations. No advance payments to vendors were required. Suppliers had first call upon monies received, although, again as with the NSPAC contract, it is not clear whether this applied to all vendors or just the seven respondents. Further, if invoices were unpaid for longer than ninety days, Response Dynamics could direct all future



receipts into an Escrow Account which it would designate and against which its representative could make disbursements.

These RCC contract provisions appear to have been ones contained in Response Dynamics' standard contract and to have been designed to accord the vendors some measure of financial protection. On the other hand, this contract was not nearly as advantageous to the vendors as the one signed with NSPAC in that, as stated above, RCC negotiated the deletion of a number of provisions which would have given Response Dynamics rights to income from list rentals as well as to co-ownership and use of any list developed as a result of the contract. It also negotiated out the standard cost of living increase provision.

No evidence is in hand indicating that it was ordinary business practice for Response Dynamics to agree to such significant changes in its standard contract. Rather, the RCC argues that these amendments would not have had an impact upon the debts owed the vendors by his client. This argument in fact supports the position of this Office in the NSPAC context that list-related income for the vendor was to be considered as being over and above a client's other contractual obligations.

Counsel also argues that these contract deletions were not detrimental to the vendors' business activities. This position is at odds with that of counsel for the vendors who have asserted that such provisions in the NSPAC contract with Response Dynamics, especially the one permitting unlimited use by that vendor of the list generated by the NSPAC program, have more than made up for the shortfall in payments by NSPAC on that earlier contract.

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Thus, with regard to the contract between the RCC and Response Dynamics and its pre-June 20, 1990 implementation, the important question is whether the compensation provisions of the contract as negotiated were in fact in the ordinary course of the vendor's business. The vendors' emphasis upon the income derived by NSPAC as a result of provisions dropped from the RCC contract alone provides a strong basis for a finding of reason to believe that the RCC contract, as carried out prior to June 27, 1990, resulted in violations of § 441b by the respondent vendors and of 2 U.S.C. § 441b by the RCC.

(ii). Post-June 27, 1990

(a). Standards to be Applied

The Commission's revised regulations with regard to both corporate and non-corporate commercial vendors require that credit be extended only in the ordinary course of the creditor's business on terms "substantially similar" to those of extensions to non-political debtors. 11 C.F.R. § 116.3(a) and (b). Creditors must make "commercially reasonable" attempts to collect. 11 C.F.R. § 100.7(a)(4). "Ordinary course of business" is expressly defined to include the vendor's own procedures and past practice, prior experience with the particular debtor, and normal industry practice. 11 C.F.R. § 116.3(c).

Advisory opinions concerning fundraising contracts issued by the Commission after June, 1990 and before the end of NSPAC activity in mid-1991 placed even more emphasis than earlier ones upon the importance of advance payments to vendors and upon assurances that the vendors would not be left bearing most of the

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risk of a fundraising project. (AO 1990-14 and AO 1990-19).

**(b). Application to NSPAC and Companies**

The post-June 27, 1990 extensions of credit to NSPAC by the respondent vendors took place under the original contracts signed in 1986 and amended slightly in early 1989. By June, 1990 it was clear that the debts owed by NSPAC to the seven vendors had not only not been reduced, but had grown steadily since October, 1988. Yet these vendors continued to extend credit. Of special interest is the new debt totaling \$61,890 reported for February, 1991.

The vendors and NSPAC appear to have ignored at least two of the elements of the definition of "ordinary course of business" found in the new regulations, namely whether the vendor had received prompt and full payment in the past from the same committee and whether the credit extension "conformed to the usual and normal practice of in the commercial vendor's trade or industry." 11 C.F.R. § 116.3(c)(3). Past practice with NSPAC should by June, 1989 have alerted the vendors to the probability that advances would not be recouped. Further, although additional information is needed in this regard, it seems highly unlikely that further extension of credit under these circumstances would have complied with "usual and normal" industry practice when a client is so deeply in debt. Regarding the Commission's warning against such vendors assuming most of the risk of fundraising, it appears that the respondent vendors took on all of the risk attendant to post-June, 1990 fundraising for NSPAC. Between July and September, 1990, NSPAC and Response Dynamics appear to have continued to favor smaller vendors over the

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respondent vendors when it came to dispensing receipts. As of June 30 debts owed these seven vendors totaled \$1,235,383. New debts accumulated in July, August and September totaled \$23,570, bringing total debts owed during that period to \$1,258,953. Payments during this three month period totaled \$31,684 for a payment rate of 2.5%. By contrast, debts owed other vendors as of June 30 totaled \$20,464. Debts incurred over the next three months totaled \$12,425, bringing the total to \$32,889. Payments to non-respondent vendors during this period totaled \$11,098, for a payment rate of 34%. Beginning in October somewhat more emphasis was placed upon directing receipts toward lowering the debt owed the seven.

With regard to the entire contract period, the vendors stress the profitability of their clients' dealings with NSPAC. They assert that the "debt to total income ratio" for the NSPAC "project" was "better than the Companies' average client debt to total income ratio."

As stated above, the Commission in Advisory Opinion 1991-32 emphasized that losses suffered by a vendor "would raise a rebuttable presumption that the company is not charging the usual and normal charge . . . ." The reverse, however, is not necessarily true; i.e., profit is not always sufficient proof that services have been provided "in the ordinary course of business." Further information is needed in order to evaluate the respondents' argument that the profits earned by the seven companies outweighed the uncollected debt owed by NSPAC.

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In light of the above evidence of special treatment accorded NSPAC by the respondent vendors, the Office of the General Counsel recommends that the Commission find reason to believe that Response Dynamics, Inc., Response Dynamics doing business as American Graphic Design, and Response Dynamics as successor in interest to American Telephone Marketing Group; Direct Response Data Management Services, Inc.; The Best Lists, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc. violated 2 U.S.C. § 441b(a); and that NSPAC also violated 2 U.S.C. § 441b(a).

(c). Application to RCC and Companies

As can be seen on the monthly summary of RCC debt at pages 47-48, the amount of new debt owed the seven vendors by the RCC jumped several fold in July and August, 1990, with net debt owed more than doubling by the end of July from \$51,546 to \$113,629. It appears that a new, larger round of solicitations took place at that time, presumably in order to collect funds to pay the vendors.

As of mid-1990 no contributions to candidates had been made by the RCC. Nor does it appear that non-respondent vendors were being favored in terms of payments. Thus, the issue is whether it was in the ordinary course of the vendors' own business to extend more credit in order to recoup earlier losses, whether such extensions are normal in the direct mail and telemarketing industries, and whether the vendors' earlier experience with the RCC should have signaled more caution. Given the information presently available, it appears that the prior experience of the



seven vendors under the RCC contract should have been enough to render highly questionable further extensions of credit after June, 1990.

This Office thus also recommends that the Commission find reason to believe that the RCC has violated 2 U.S.C. § 441b(a) and that the respondent vendors have violated 2 U.S.C. § 441b(a) with regard to extensions of credit to the RCC.

**2. Affiliation; Excessive Contributions**

2 U.S.C. § 433(b)(2) requires that statements of organization filed by political committees include the names and other information pertaining to committees affiliated with the reporting committee. 11 C.F.R. § 100.5(g)(2) defines "affiliated committee" to include, inter alia, all committees "established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons . . . ."

Pursuant to 2 U.S.C. § 441a(a)(5), "all contributions made by political committees established or financed or maintained or controlled by any . . . person, or by any group of such persons, shall be considered to have been made by a single political committee." See also 11 C.F.R. § 100.5(g)(3)(v). Pursuant to 11 C.F.R. § 110.3(a), "all contributions made or received by more than one affiliated committee . . . shall be considered to be made or received by a single political committee. 2 U.S.C. § 441a(a)(1)(C) limits to \$5,000 the amount which any person may contribute to a political committee in any calendar year, while 2 U.S.C. § 441a(f) prohibits committees from accepting excessive contributions. 2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the

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contributions which any multicandidate committee may contribute to a candidate with respect to any federal election.

Factors to be considered by the Commission in determining whether there is evidence that one committee has been established, financed, maintained or controlled by another committee, resulting in affiliation, include, but are not limited to,

1. Whether a sponsoring organization owns a controlling interest in another organization sponsoring a political committee;
2. Whether a committee is able "to direct or participate in the governance of another . . . committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures";
3. Whether a committee "has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another . . . committee";
4. Whether a committee "has a common or overlapping membership with another . . . committee which indicates a formal or ongoing relationship between the . . . committees";
5. Whether a committee "has common officers or employees with another . . . committee which indicates a formal or ongoing relationship between the . . . committees";
6. Whether a committee "has any members, officers or employees who were members, offices or employees or another . . . committee which indicates a formal or ongoing relationship between . . . the committees, or which indicates the creation of a successor entity";
7. Whether a committee "provides funds or goods in a significant amount or on an ongoing basis to another . . . committee . . .";
8. Whether a committee "causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another . . . committee";
9. Whether a committee or its agent "had an active or significant role in the formation of another . . . committee"; and

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10. Whether the committees "have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the . . . committees."

11 C.F.R. § 100.5(g)(4)(ii)(A-J).

a. PVC and RCC

The complaint in MUR 3578 alleges that the PVC and the RCC "were established, and are financed, maintained or controlled by the same person or group of persons and are thereby affiliated." In support of this allegation, the complainant asserts the following:

1. Both committees employ Floyd Brown "in an executive capacity." Mr. Brown is both founder and chairman of PVC and is chairman of RCC. Robert E. Miller, Jr., serves as treasurer of both committees.

2. The two committees until recently shared the same depository, namely The George Mason Bank of Fairfax, Virginia, and that a caller had been informed by the PVC that contributions to both committees could be made by using a single check.

3. The two committees share seven common vendors.

In an affidavit attached to the complaint, Leslie Kerman asserted that in July, 1992, she was told by an individual at the PVC that someone could make contributions to both the PVC and the RCC by means of the same check and that the two committees were "affiliated."

In his response on behalf of the RCC and his affidavit in MUR 3578 (Attachments 5 & 6), Floyd Brown states that he is the "Chairman of Presidential Victory Committee" and the chairman of the RCC. In addition, Robert E. Miller was the treasurer of the RCC at the time he was named treasurer of the PVC.

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Mr. Brown in an affidavit, as does counsel for the PVC, (Attachment 6), asserts that "the RCC . . . is no longer operational as a political committee, that it was not operational with respect to the 1992 election cycle, and that it has not been operational for many months (beginning well before the formation of PVC) except with respect to efforts to retire the debt it has accrued. "In my opinion, there is no affiliation between PVC and RCC. They are completely different committees formed in different time periods for different purposes, and RCC has not been operational in the 1992 election cycle." The PVC argues that the alleged statements by a representative of the PVC regarding affiliation cited in the affidavit from Leslie Kerman are either false or based upon "ignorance and/or a misunderstanding."

While the RCC made a total of \$4,000 in contributions in October and November, 1990, to six candidates for the U.S. Senate: Hank Brown, Hal Daub, Jim Rappaport, James Tauke, Lynn Martin and Pat Saiki, and to one Congressional candidate, Robert Williams, no additional direct contributions have been reported since that time, and thus none were apparently made in 1992. Nor have any independent expenditures been reported by the RCC.

In 1992 the PVC made a total of \$7,750 in contributions to nine candidates for the Senate and the U.S. House of Representatives; the recipients included the authorized committees of Bruce Herschensohn, Duane Sommers, Pam Roach, Mark Siljander, Tim Hutchinson, James Lacey, Tom Scott, William Dannemeyer and Enid Greene. The PVC's 1992 disbursements also included

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\$2,060,810.97 in independent expenditures on behalf of "George Bush for President."

It is clear that the RCC and the PVC were founded and have been directed by the same individual(s), thus meeting, at the least, the requirements for affiliation at 11 C.F.R.

§ 100.5(g)(4)(ii)(E) (common officers or employees) and (I) (significant role by one in formation of second). This Office recommends that the Commission find reason to believe that the RCC and the PVC violated 2 U.S.C. § 433(b)(2) by not reporting each other as affiliated committees.<sup>23</sup>

With affiliation, the RCC and the PVC would have shared both contribution and receipt limitations pursuant to 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 110.3. However, as the respondents have argued, the two committees were active during different time periods and supported different candidates. As a result, no issues arise as to violations of 2 U.S.C. § 441a(a)(2)(A) as a result of excessive contributions by the two committees to the same candidates.

Further, an examination of the Commission's index of itemized contributions received by the RCC and by the PVC in 1991-92 shows little overlap and reveals no instances in which the combination of an individual's contributions to the two committees totaled more than \$5,000 in a single calendar year. In fact, the RCC reported receipts of only \$756.87 in 1992, while the PVC did

23. The complaint in MUR 3578 cites 11 C.F.R. § 102.2(b) as a provision violated by the RCC and the PVC. This regulatory provisions defines "affiliated committee" and thus is not one which is subject to violation.



not begin operations until April of that year. Thus, there is no evidence that these affiliated committees violated 2 U.S.C. § 441a(f) by accepting excessive aggregated contributions.

**b. NSPAC and RCC**

Neither complaint directly alleges the affiliation of NSPAC and the RCC. Nevertheless, the statement in the article from the National Journal attached to the complaint in MUR 3638 concerning the overlapping of members of the committees' respective boards of directors and consultants has raised questions as to the role of NSPAC in the creation of the RCC and led to an examination of both committees' reports.

Of the factors in the Commission's regulations evidencing affiliation, those at present most clearly relevant to the NSPAC/RCC relationship appear to be the involvement of common officers or employees in two ongoing committees; the past involvement by members, officers or employees of one committee in another committee with the resulting possibility of the "creation of a successor entity"; the active involvement by the agent of one in the formation of the second; and a pattern of overlapping contributors. According to the news article cited above, Floyd G. Brown, a consultant for NSPAC, founded the RCC in late 1989 and has acted as its chairman. Further, most of RCC's board members were allegedly on the board of NSPAC. Thus, whether one considers these committees to be contemporaries or predecessor/successor, their apparently shared personnel bring them within the above affiliation factors.

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An examination of direct contributions made by NSPAC and the RCC in 1990 shows that each contributed to at least two of the same federal candidates, Jim Rappoport and Pat Saiki. More revealing are the committees' reports of contributions received. In 1990 the RCC received contributions from 70 individuals. Of these contributors at least 21, or almost one-third, were also reported as having made contributions to NSPAC either during that same year or in 1989.

This Office recommends that the Commission find reason to believe that NSPAC and the RCC violated 2 U.S.C. § 433(b)(2) by not reporting each other as affiliated committees.<sup>24</sup>

Again, with affiliation NSPAC and RCC would have shared both contribution and receipt limitations pursuant to 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 110.3. NSPAC attained multicandidate status on October 14, 1989, while RCC qualified on June 18, 1990. As a committee affiliated with NSPAC, RCC would in fact have shared the older committee's multicandidate status at its inception in December, 1989. Thus, throughout 1990 the two committees were limited to a aggregation of \$5,000 in contributions per election to candidate committees and were permitted to receive a combined total of \$5,000 from individual contributors.

At present, as stated above, the two shared recipients which have been identified are Pat Saiki and Jim Rappoport. The

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24. The issue of whether all three committees are affiliated will be addressed once more detailed information is available regarding, for example, possible three-way sharing of board members and other personnel and the exact role of Floyd G. Brown in NSPAC.

committees' combined contributions to these candidates did not exceed \$5,000 per election. It does appear, however, that combined receipts from at least one of the 21 shared contributors exceeded \$5,000. These excessive contributions were as follows:

	<u>NSPAC</u>	<u>RCC</u>
Roy W. Arledge	5/25/90 - \$ 200	2/26/90 - \$ 250
	7/3/90 - 200	5/7/90 - 300
	8/6/90 - 300	6/18/90 - 400
	8/17/90 - 300	6/29/90 - 500
	10/16/90 - 500	7/16/90 - 200
	\$1,500	8/2/90 - 200
		8/7/90 - 750
		8/15/90 - 500
		8/16/90 - 200
		8/20/90 - 1,000
		8/23/90 - 250
		9/20/90 - 200
		10/10/90 - 200
		10/31/90 - 2,000
		\$6,950 <sup>25</sup>

Thus, this Office also recommends that the Commission find reason to believe that NSPAC and the RCC violated 2 U.S.C. § 441a(f) by accepting contributions in excess of \$5,000.

### 3. Extensions of Credit to PVC

The complaint in MUR 3578 alleges that the Presidential Victory Committee failed to report either contributions or debts and obligations, and/or accepted excessive or prohibited contributions in the form of extensions of credit by the same vendors as those discussed above with regard to NSPAC and the RCC, plus the Washington Intelligence Bureau. More specifically, the complaint cited the PVC's 1992 March Monthly Report which showed

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25. Should it be later determined that NSPAC and the RCC are not affiliated, these excessive contributions to the RCC alone would be pursued separately.

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\$27,304 in receipts and \$510.55 in expenditures during February, and alleged that such receipts prior to payments of vendors were either outside the ordinary course of business or the result of personal, illegal guarantees by individuals. The complaint assumed that the \$27,304 was raised by means of a direct mail campaign.

The complaint in MUR 3638 does not allege violations by the PVC. It does assert, however, that credit extended by the seven respondent vendors to the RCC was extended indirectly to the PVC by virtue of the affiliation of the two committees which is alleged in MUR 3578.

a. The Law

2 U.S.C. § 434(b)(2),(5) and (8) requires committees to report all contributions received and the amount and nature of outstanding obligations. The statutory and regulatory provisions regarding extensions of credit are given above.

b. PVC/Vendor Relationship

Any written contract between the PVC and one or more of the respondent vendors, or between the PVC and the Washington Intelligence Bureau, is not presently in hand.

c. Execution - Debts Incurred and Payments Made

The monthly pattern of PVC's indebtedness was as follows:

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Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments <sup>26</sup> To Others	Net Debt Others
2/1-29/92	-0-	\$ -0-	-0-	-0-	\$ 510 <sup>27</sup>	\$ -0-
3/1-31/92	-0-	208,651	-0-	-0-	24,324	-0-
4/1-30/92	-0-	186,625	-0-	\$23,207	36,315	11,356
5/1-31/92	-0-	150,982	-0-	27,563	70,885	27,760
6/1-30/92	-0-	108,315	-0-	6,825	28,912	18,048
7/1-31/92	-0-	70,501	-0-	17,794	53,985	25,342
8/1-31/92	-0-	98,568	-0-	-0-	18,475	12,367
9/1-30/92	-0-	288,411	-0-	19,693	33,955	12,613
10/1-14/92	-0-	222,945	-0-	34,555	8,915	40,402
10/15-						
11/23/92	-0-	331,852	-0-	18,263	95,394	4,475
11/24-\						
12/31/92	-0-	3,024	-0-	-0-	8,124	3,455

The PVC's report covering February, 1992 showed \$27,304 in receipts, of which \$20,704 was unitemized and \$6,600 was received from twelve itemized individuals. In March this committee received \$224,322.16 of which \$165,572.16 was unitemized and \$58,750 from 88 itemized individuals.

The above chart shows that the PVC reported neither debts owed nor expenditures made during February, 1992. However, in March substantial payments were made, \$208,651 to the seven vendors discussed with regard to NSPAC and the RCC, and \$24,324 to others. It is not known exactly when the vendors' invoices for February activities were forwarded to the PVC; however, all of the vendors had been fully paid by the end of March.

26. The figures in this column include approximate totals of payments on accumulated debt and payments to vendors on invoices received during the same month. This contrasts with the similar column in the charts for NSPAC and the RCC which included only payments on previous debts owed vendors other than the seven respondent companies.

27. This figure included \$500 to the U.S. Postmaster for postage.

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With regard to the overall pattern of PVC indebtedness and payments, none of the figures on the chart for net debt owed vendors other than the seven respondent vendors includes an amount owed the Washington Intelligence Bureau. As with the seven respondent vendors, the PVC paid the Washington Intelligence Bureau in full each month.

d. PVC Responses to complaint

In response to the complaint in MUR 3578 (Attachment 6), the PVC has stated:

[T]he funds in question were not raised in a direct mail campaign, as assumed by the DNC. They were raised in a telemarketing campaign that, unlike some direct mail campaigns, involved minimum up-front expense. . . . Telemarketing bills were paid beginning on March 4, 1992, and they were reported properly, beginning with the report for the very next month - - March 1992.

In a sworn affidavit dated September 2, 1992, which was attached to the PVC's response, Floyd G. Brown elaborates upon the same argument:

The reason for the absence of significant expenditures in the March 20, 1992 FEC report of PVC is not difficult to understand: the receipt by PVC of over \$27,000, as reported to the FEC, was due to a telemarketing fundraising project, for which a highly select group of donors was targeted, in February 1992. The expenses relative to this project were paid to the vendors involved, beginning on March 4, 1992, which was after receipt of the initial funds during February. This was done in the ordinary course of PVC's business, and there were no special credit extension terms, as the DNC suggests, nor were there personal guarantees.

The DNC's incorrect assertion that PVC's initial (March 20, 1992) FEC report indicates extraordinary vendor terms or personal guarantees is grounded in the DNC's stated assumption that the funds were the result of a substantial direct mail fundraising campaign (for which substantial up-front costs, including postage costs, would normally be involved).

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As explained above, the receipts in question came as the result of a telemarketing campaign in which the advancement of substantial costs, such as postage, was not required.

e. Analysis

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The PVC's reports show that at the end of February, 1992 it had \$26,793 in cash on hand and that receipts during March totaled \$224,322. Expenditures in February totaled \$510 and those in March totaled \$232,975. Of the latter figure, \$28,856 was paid to Response Dynamics on March 4 and 6 for postage. The first reported payment to American Telephone Marketing Group (reported as "American Telemarketing Group") was made on March 11 in the amount of \$5,000 for "professional fee." Another, non-respondent vendor was paid \$200 on March 6 for "telephone installation."

The PVC argues that the February fundraising program required "minimum up-front expenses" because it involved telephone solicitations. Floyd Brown stated that the targets of these solicitations were a "highly select group of donors."

No information is presently in hand indicating what vendors, if any, were used for the solicitation program in February. The committee's first reported expenditures to the vendors at issue in this matter came in early March as did the payment for telephone installation. As noted above, \$20,704 of the \$26,793 received in February was reported as unitemized contributions, thus possibly casting some doubt upon the committee's selectivity as to potential contributors and indicating that more than just a few calls were made.

Nevertheless, no matter how the PVC collected its first contributions, it had more than enough funds in March to cover the debts owed vendors for start-up and other costs billed for any telemarketing program, and for any other programs, undertaken during February. As discussed earlier, it has been Commission policy to permit vendors to advance the costs of starting fundraising programs, based upon industry practice. Thus, there is no evidence that the PVC or the vendors made any initial extensions of credit outside the ordinary course of business.

The chart at page 65 shows that the PVC never accumulated debts owed with regard to the seven respondent vendors in this matter. Nor did it accumulate debts owed the Washington Intelligence Bureau. Rather, each of these vendors was paid off completely each month. All told, there is no evidence that the PVC received extensions of credit outside the ordinary course of business in violation of 2 U.S.C. § 441(b).

Nor is there evidence that the PVC failed to report contributions in violation of 2 U.S.C. § 434(b)(2), or that the committee failed to report debts owed in its reports, including that for February, 1992, in violation of 2 U.S.C. 434(b)(8). This Office recommends that the Commission find no reason to believe such violations occurred.

With regard to the assertion in the complaint in MUR 3638 that the PVC benefited from extensions of credit to the RCC by virtue of the affiliation of the two committees, it appears from the chart at page 65 that the opposite may have been true. Any

written contracts between the PVC and the seven respondent vendors apparently called for either advance payments or virtually immediate payment upon the receipt of invoices, because at no time did a debt owed one of these vendors appear on a report. The seven plus the Washington Intelligence Bureau obviously had first call on any receipts, a call which may well have stemmed from the vendors' experience with the RCC and earlier with NSPAC. Thus, there is no evidence of an advantage to the PVC based upon its affiliation with the RCC.

4. Excessive Contributions from Individual

2 U.S.C. § 441a(a)(1)(C) limits to \$5,000 the amount which an individual may contribute in any calendar year to a political committee which is neither an authorized committee nor a national party committee. 2 U.S.C. § 441a(f) prohibits a committee from accepting contributions in excess of the limitations established at 2 U.S.C. § 441a.

11 C.F.R. § 103.3(b)(3) provides that contributions which are not excessive on their face, but which become excessive when aggregated with other contributions from the same contributor, may be either placed into a campaign depository pending reattribution to another contributor or redesignation to another election. If reattribution or redesignation is not received or is not possible, a refund must be made within 60 days of receipt of the excessive portion.

As stated above, the complaint in MUR 3578 alleges that Mr. Wesley West of Houston, Texas contributed \$14,000 to the PVC in 1992. On September 11, 1992, counsel for Mrs. Wesley West

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responded to the complaint (Attachment 7), explaining that Mr. West had died in 1984 and that the contributions at issue were from Mrs. West, then 84 years of age. He stated that in May, 1992 counsel's law firm had been asked by Mrs. West's grandson, Stuart Stedman, in response to an inquiry from the National Republican Senatorial Committee ("NRSC"), to determine whether Mrs. West's 1992 campaign contributions were in compliance with federal campaign finance laws. Counsel for Mrs. West stated further that, as a result of contacts with recipients of Mrs. West's 1992 contributions, it was determined that between February 29 and May 2, 1992, she had made a total of \$15,000 in contributions to the PVC's federal account. On May 27, 1992, the PVC wrote to Mrs. West confirming her contributions and asking that she redesignate \$10,000 to a PVC non-federal account. On June 5, 1992, Mrs. West requested in writing a refund of the \$10,000 and on August 13, 1992, Floyd Brown, chairman of PVC, hand delivered a refund check to her. Copies of this correspondence are attached to the response.

The PVC's response to the complaint in MUR 3578 acknowledges that the committee received excessive contributions from Mrs. West, although the figure given is \$14,000 rather than \$15,000. Counsel argues that the refund, while it should have come at an earlier date, was in fact made before the filing of a complaint or action by the Commission. Attached to this response is a copy of the refund check which is dated August 5, 1992.



Mrs. West's contributions to the PVC were as follows:

<u>Date</u>	<u>Amount</u>
February 29, 1992	\$ 1,000
March 7, 1992	5,000
March 16, 1992	1,000
March 23, 1992	5,000
March 23, 1992	1,000
May 2, 1992	<u>2,000</u>
Total	\$15,000

Thus, she first exceeded her \$5,000 limitation on March 7, 1992. The Committee refunded the \$10,000 in excessive contributions by means of a check which was dated August 5, 1992, but which was not delivered until August 13, 1992. The Committee's refund was not made within sixty days of the receipt of any portion of Mrs. West's excessive contributions.

This Office recommends that the Commission find reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated U.S.C. § 441a(f). In light of Mrs. West's circumstances and the fact that representatives of Mrs. West determined that excessive contributions had been made and sought a refund prior to the filing of the present complaint or any Commission action, this Office recommends that the Commission find reason to believe that she violated 2 U.S.C. § 441a(a)(1)(C) and close the file in her regard. An admonishment will be included in the letter notifying Mrs. West of such a determination.

##### 5. Absence of Signature of Treasurer

The complaint in MUR 3578 alleges that the PVC violated 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.14(a) by having had its

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1992 March, April and June and July Monthly Reports and amended reports signed by Chris Miller rather than Robert E. Miller, Jr., the treasurer, or David Bossie, the assistant treasurer.

2 U.S.C. § 434(a)(1) requires that the treasurer of a committee file reports of receipts and disbursements, and sign each required report. 11 C.F.R. § 104.14(a) states that "[e]ach individual having the responsibility to file a designation, report or statement required under this subchapter shall sign the original designation, report or statement."

An examination of the PVC's reports reveals, and this respondent admits, that the treasurer, Robert E. Miller, did not sign the front page of the reports cited by the complainant. Counsel states that delegation of the signatures was made to Mr. Miller's son and partner "upon informal advice received by Mr. Miller from an FEC employee." Amended reports with Robert Miller's signature have been filed, apparently in response to the complaint, and counsel states that the practices of letting someone else sign the reports "will not be repeated."

In light of the amended reports, this Office recommends that the Commission find reason to believe that the PVC and Robert Miller, as treasurer, violated 2 U.S.C. § 434(a)(1), but take no further action as to this violation. The letter to the committee will include an admonishment regarding this violation.

**6. Mis-Reporting of Independent Expenditure-Related Debts**

"Independent expenditure" is defined at 2 U.S.C. § 431(17) as an "expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without

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cooperation or consultation with any candidate . . . ." 2 U.S.C. § 434(c) requires that political committees which make independent expenditures report any such expenditures in excess of \$250 in a calendar year as required by 2 U.S.C. § 434(b)(6)(B)(iii). This latter provision requires that the report of an independent expenditure include the person receiving the disbursement, the date, the amount and the purpose of any expenditure in excess of \$200. 2 U.S.C. § 431(9)(A)(i) includes in the definition of "expenditure . . . a written contract, promise or agreement to make an expenditure." 2 U.S.C. § 434(b)(8) requires that political committees report the amount and nature of outstanding debts and obligations owed by the committee.

In the present matter NSPAC reported hundreds of thousands of dollars in debts owed on Schedule D's, but until June, 1989 did not state that these debts were related to independent expenditures on behalf of named candidates. The debts included the large sums discussed above which were owed for direct mail and telemarketing services to the respondent vendors. These same vendors were also reported as recipients of partial payments for the same services and programs as those involved in the debts. NSPAC reported the payments as independent expenditures on behalf of George Bush and others on Schedule E's; however, prior to a series of amendments filed on June 29, 1989 for reports starting with the 1988 Post Election Report, NSPAC reported the debts only as being for "printing," "professional fees," "lists," etc. (See Attachment 8 for examples of an original report and amendment). Thus, the fact that sizeable debts had been incurred by NSPAC in connection with

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independent expenditure programs was not revealed, as required, before the 1988 election, even though NSPAC had begun reporting independent expenditures to the same creditors on behalf of George Bush and certain candidates for the U.S. Senate as early as June, 1987.

The PVC reported \$2,060,810 in independent expenditures in 1992. It also accumulated debts which totaled as much as \$40,634 as of October 14, 1992, and reported these debts on Schedule D's. The committee did not, however, report any of these debts as related to independent expenditures. Most were reported as owed for legal fees, office supplies, travel, clipping services, delivery services, and telephones and, thus, did not apparently involve activities expressly advocating the election or defeat of a candidate. Several of the debts, however, involved "media" expenses and "consulting fees" owed vendors which had also been reported as recipients of independent expenditures for the same purposes on behalf of specific candidates. Thus, these latter two categories of debts were presumably related to independent expenditures and should have been reported as such.

This Office recommends that the Commission find reason to believe that NSPAC and the PVC violated 2 U.S.C. § 434(c) by failing to report fully debts incurred in connection with independent expenditure programs.<sup>28</sup>

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28. As indicated by the chart on page 9 above, the RCC did not make independent expenditures.

7. Floyd Brown

The complaint in MUR 3638 cites Floyd Brown as a respondent but makes no specific allegations against him as an individual. Rather, the focus is upon his involvement with the RCC and earlier with NSPAC. Therefore, this Office makes no recommendations at this time with regard to Mr. Brown, pending the receipt of additional information regarding the respondent committees in this matter.

D. MERGER OF MUR 3578 and MUR 3638

In the light of the overlapping of issues and respondents in MUR 3578 and MUR 3638, this Office recommends that the two matters be merged.

E. DISCOVERY

Attached for the Commission's consideration and approval are ten subpoenas and orders to be issued to the three political committees and seven vendors involved in this matter. This discovery is designed to elicit the facts concerning the relationships among the vendors and between the vendors and the committees, and to determine the vendors' ordinary course of business with regard to extensions of credit and collection of debts owed to them.

III. RECOMMENDATIONS

1. Merge MUR 3578 and MUR 3638.
2. Find reason to believe the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. § 441b(a).
3. Find reason to believe the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by virtue of affiliation with the Republican Challengers Committee.

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4. Find reason to believe the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. § 434(c).

5. Find reason to believe the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 441b(a).

6. Find reason to believe the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by virtue of affiliation with the National Security Political Action Committee and with the Presidential Victory Committee.

7. Find reason to believe the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 433(b)(2) by virtue of affiliation with the Republican Challengers' Committee.

8. Find reason to believe the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 434(c).

9. Find reason to believe Response Dynamics, Inc.; Response Dynamics, Inc. doing business as American Graphic Design; and Response Dynamics, Inc. as the surviving entity after merger with American Telephone Marketing Group, Inc., violated 2 U.S.C. § 441b(a).

10. Find reason to believe Direct Response Data Management Service, Inc.; The Best Lists, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc. violated 2 U.S.C. § 441b(a).

11. Find reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Mrs. Wesley West.

12. Find reason to believe that Mrs. Wesley West violated 2 U.S.C. § 441a(a)(1)(C), but take no further action and close the file as to this respondent.

13. Find no reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 434(b)(2) or § 434(b)(8) by failing to report contributions or debts owed.

14. Find no reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 441b(a).

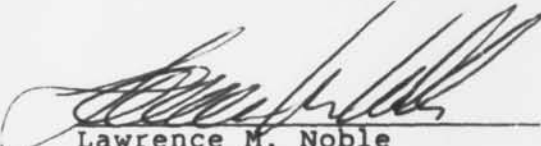
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15. Find reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 434(a)(1), but take no further action in this regard.

16. Approve the appropriate letters.

17. Approve the attached Factual and Legal Analyses and Subpoenas and Orders.

8/8/94  
Date

  
Lawrence M. Noble  
General Counsel

Attachments

1. Response from counsel for the Companies (minus attachments)
2. Affidavits submitted by David A. Kunko and Ronald Kanfer
3. Response from counsel for NSPAC
4. Response from counsel for RCC
5. Response from Floyd Brown
6. Responses from counsel for PVC (2) and Floyd Brown affidavit
7. Response from counsel for Mrs. Wesley West
8. Sample original and amended reports
9. Factual and Legal Analyses (4)
10. Subpoenas and Orders (10)

9604371108



FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/MICHAEL C. KENNEY<sup>me.c.k.</sup>  
COMMISSION SECRETARY

DATE: AUGUST 12, 1994

SUBJECT: MURS 3578 AND 3638 - FIRST GENERAL COUNSEL'S REPORT  
DATED AUGUST 8, 1994.

The above-captioned document was circulated to the  
Commission on Tuesday, August 9, 1994 at 4:00.

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>XXX</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, September 13, 1994.

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

960437109

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

National Security Political Action )  
Committee; )

MURS 3578  
AND 3638

Elizabeth I. Fediay, as treasurer; )  
Republican Challengers Committee; )  
Robert E. Miller, Jr., as treasurer; )  
Presidential Victory Committee; )

Robert E. Miller, Jr., as treasurer; )  
Mrs. Wesley West; )

Mr. Floyd G. Brown; )  
Response Dynamics, Inc.; )

Direct Response Data Management )  
Service, Inc.; )

American Telephone Marketing )  
Group, Inc.; )

The Best Lists, Inc.; )

American Graphic Design; )

Mid-America Printing Company, Inc.; )

Fulfillment Management Services, Inc. )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the  
Federal Election Commission executive session on  
September 27, 1994, do hereby certify that the Commission  
took the following actions in MURS 3578 and 3638:

1. Decided by a vote of 6-0 to

- a) Merge MUR 3578 and MUR 3638.
- b) Find reason to believe the National  
Security Political Action Committee  
and Elizabeth I. Fediay, as  
treasurer, violated 2 U.S.C. § 441b(a).

(continued)

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- c) Find reason to believe the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. § 434(c).
  - d) Find reason to believe the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 441b(a).
  - e) Find reason to believe the Presidential Victory Committee and Robert E. Miller, Jr., as Treasurer, violated 2 U.S.C. § 434(c).
  - f) Find reason to believe Response Dynamics, Inc.; Response Dynamics, Inc. doing business as American Graphic Design; and Response Dynamics, Inc. as the surviving entity after merger with American Telephone Marketing Group, Inc. violated 2 U.S.C. § 441b(a).
  - g) Find reason to believe Direct Response Data Management Service, Inc.; The Best Lists, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc. violated 2 U.S.C. § 441b(a).
  - h) Find reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Mrs. Wesley West.

(continued)



- 9604377112
- (i) Find reason to believe that Mrs. Wesley West violated 2 U.S.C. § 441a(a)(1)(C), but take no further action and close the file as to this respondent.
  - (j) Find no reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 434(b)(2) or § 434(b)(8) by failing to report contributions or debts owed.
  - (k) Find no reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 441b(a).
  - (l) Find reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 434(a)(1), but take no further action in this regard.
  - (m) Approve the appropriate letters as recommended in the General Counsel's report dated August 8, 1994.

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

(continued)

2. Decided by a vote of 5-1 to

- a) Find reason to believe the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by virtue of affiliation with the Republican Challengers Committee.
- b) Find reason to believe the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by virtue of affiliation with the National Security Political Action Committee and with the Presidential Victory Committee.
- c) Find reason to believe the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 433(b)(2) by virtue of affiliation with the Republican Challengers' Committee.

(continued)

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- d) Approve the Factual and Legal Analyses and Subpoenas and Orders as recommended in the General Counsel's report dated August 8, 1994, subject to amendment of the Factual and Legal Analyses as noted by the Office of General Counsel.

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

Attest:

9-28-94  
Date

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

960437114



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OCTOBER 3, 1994

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

RE: MUR 3638  
Response Dynamics, Inc.  
Response Dynamics, Inc. doing  
business as American Graphic  
Design  
Response Dynamics, Inc. as the  
surviving entity after merger  
with American Telephone  
Marketing Group, Inc.  
Direct Response Data Management  
Service, Inc.  
The Best Lists, Inc.  
Mid-America Printing Company, Inc.  
Fulfillment Management Services,  
Inc.

Dear Mr. Schweitzer and Mr. Braden:

On October 8, 1992, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint were enclosed with the notifications. This matter was designated MUR 3638. Earlier, on August 12, 1992 another complaint had been filed which did not cite your clients as respondents, but which concerned issues related to those raised in the complaint in MUR 3638. The earlier complaint was designated MUR 3578. The two matters have now been merged by the Commission as MUR 3638.

Upon further review of the allegations contained in the complaint, and information supplied on behalf of your clients, the Commission, on September 27, 1994, found that there is reason to believe Response Dynamics, Inc.; Response Dynamics, Inc. doing business as American Graphic Design; Response Dynamics, Inc. as the surviving entity after merger with American Telephone Marketing Group, Inc.; Direct Response Data Management Service, Inc.; The Best Lists, Inc.; Mid-America Printing Company, Inc.;

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MUR 3638

William H. Schweitzer, Esquire

E. Mark Braden, Esquire

Page 2

and Fulfillment Management Services, Inc., violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analyses, which formed bases for the Commission's findings, are 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 Subpoenas to Produce Documents and Orders to Submit Written Answers 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 responses to the subpoenas and orders. In the absence of additional information, the Commission may find probable cause to believe that violations have occurred and proceed with conciliation.

If your clients 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 or agreements 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.



William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Page 3

If you have any questions, please contact Anne A.  
Weissenborn, the senior attorney assigned to this matter, at  
(202) 219-3400.

For the Commission,



Trevor Potter  
Chairman

Enclosures  
Subpoenas and Orders (7)  
Factual and Legal Analyses (7)

9604377117

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
)  
)

MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Response Dynamics, Inc.  
c/o William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

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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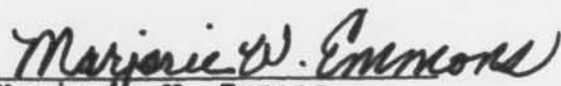
MUR 3638  
Response Dynamics, Inc.  
Page 2

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 3rd,  
day of October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories  
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.

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 respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc.; Direct Response Data Management Service, Inc.; American Telephone Marketing Group, Inc.; The Best Lists, Inc.; American Graphic Design, a division of Response Dynamics, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc.

"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.

"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.

"Shared clients" or "clients shared by the Companies" shall mean clients who have contracted for the services of two or more of the Companies for a particular direct mail or telemarketing project or series of such projects.

"The Agency" shall mean the vendor corporation designated as such in the contract entered into by Response Dynamics, Inc. and the National Security Political Action Committee ("NSPAC") on April 7, 1986 and/or the contract entered into by Response Dynamics, Inc and the Republican Challengers Committee ("RCC").

#### INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. Describe the present legal status of American Telephone Marketing Group, Inc. ("ATMG"). If this company has merged with, or been sold to, Response Dynamics, Inc., provide the date of the merger or sale and state whether Response Dynamics has assumed the debts and obligations of ATMG. If there has been some other outcome with regard to ATMG, please explain.
2. Produce a copy of any merger or sale agreement entered into by Response Dynamics and American Telephone Marketing Group.
3. Describe the legal status of American Graphic Design from 1986 through the present. State whether it is or has ever been a separate corporate entity or whether it has always functioned as a division of Response Dynamics. If there was a change in the legal status of American Graphic Design during this period, describe the change and state when it occurred.
4. For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business relationships between and among Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc., with regard to the provision of direct mail and telecommunication services to clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.

5. For the period between January 1, 1986 and December 31, 1992, state whether Response Dynamics ever served as the principal contractor when two or more of the Companies were hired by a single client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this business arrangement.

6. For the period between January 1, 1986 and December 31, 1992, state whether there were instances in which Response Dynamics did not serve as the principal contractor when two or more of the Companies were hired by single client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this business arrangement.

7. For the period between January 1, 1986 and December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for each of the other Companies involved to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether separate agreements were signed by the other Companies.

8. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of the Companies with regard to extensions of credit to clients shared by the Companies. If there were non-written policies or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of the Companies concerning limits on accrued amounts of debt owed to the Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amounts of debt which could be accrued and/or limits on payment time periods, please describe in detail.

9. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics regarding limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.

10. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of the Companies with regard to billing and payment procedures to be used for clients shared by the Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

11. Produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics between January 1, 1986 and December 31, 1992, with regard to billing and payment procedures for clients not shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

12. In situations in which clients were shared by the Companies, state whether each Company usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for each Company to send its invoices through Response Dynamics, Inc.

13. In situations in which clients were shared by the Companies, state whether clients usually and normally made payments directly to each Company. If no, state whether it was usual and normal business practice in such situations for clients to make payments to the other six Companies through Response Dynamics.

14. For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by Response Dynamics to collect on debts owed by clients. In situations in which clients were shared by the Companies, state whether it was usual and normal business practice for these steps to be taken by Response Dynamics on behalf of all of the Companies involved in a particular contract.

15. Produce all documents related to the negotiation of the contract signed by Response Dynamics on April 7, 1986 with the National Security Political Action Committee ("NSPAC").

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16. Identify the individuals who represented Response Dynamics in the 1986 contract negotiations with NSPAC.
  17. Identify the individuals who represented NSPAC in the 1986 negotiations with Response Dynamics.
  18. Identify the individuals at Response Dynamics who were primarily responsible for performance of the company's contract with NSPAC.
  19. State whether Response Dynamics, as "the Agency," served as the principal contractor for the contract with NSPAC dated April 7, 1986.
  20. Produce all other written agreements entered into by Response Dynamics with NSPAC and with the other six Companies in carrying out the contract with NSPAC dated April 7, 1986.
  21. If there were no written agreements between Response Dynamics and the other six Companies in carrying out the contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements between or among the Companies related to performance of the contract.
  22. Produce all documents related to decisions taken between October, 1988 and December 31, 1991 to undertake new direct mail and/or telephone solicitations for NSPAC pursuant to the contract with NSPAC dated April 7, 1986.
  23. Provide a listing of all direct mail and telemarketing projects carried out by the Companies for NSPAC between October 1, 1988 and December 31, 1991, together with the dates and costs of each project.
  24. Identify the individuals who represented Response Dynamics at discussions and/or negotiations with NSPAC concerning the direct mail and telemarketing projects carried out between October 1, 1988 and December 31, 1991, pursuant to the contract with NSPAC dated April 7, 1986.
  25. Produce copies of all direct mail solicitations produced and mailed pursuant to the Response Dynamics/NSPAC contract dated April 7, 1986.
  26. Produce copies of all telemarketing scripts used in performance of the Response Dynamics/NSPAC contract dated April 7, 1986.



27. For the period between October 1, 1988 and December 31, 1991, provide a listing of all services performed by Response Dynamics itself for NSPAC pursuant to the contract with NSPAC dated April 7, 1986.

28. For the period between April 7, 1986 and June 31, 1991, produce all invoices sent by Response Dynamics to NSPAC, including both invoices covering work performed or to be performed by Response Dynamics directly and invoices covering work performed or to be performed by the other six Companies for which billings were the responsibility of Response Dynamics. State which of the other six Companies sent invoices directly to NSPAC.

29. State whether funds advanced by Response Dynamics for postage, telephone vendors and other fundraising services were always reimbursed before proceeds from fundraising activities were disbursed to NSPAC or to other vendors, pursuant to Section 5(f) of the contract with NSPAC dated April 7, 1986. If no, list and describe the instances in which such reimbursements were not made.

30. State how much of the debt presently owed Response Dynamics by NSPAC is comprised of unreimbursed advances.

31. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with performance by the seven Companies of the Response Dynamics contract with NSPAC dated April 7, 1986. If there were non-written procedures or practices, please describe in detail.

32. Produce all documents related to procedures used for authorization by Response Dynamics and NSPAC of payments to vendors by the Washington Intelligence Bureau from the Escrow Fund established pursuant to Section 5(c) of the Response Dynamics contract with NSPAC dated April 7, 1986. If there are non-written procedures or practices, please describe in detail.

33. Describe the policies and practices used by Response Dynamics and the Washington Intelligence Bureau to determine at any particular point in time which vendors were to receive payments for services rendered NSPAC pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986.

34. State whether payments to vendors for services rendered to NSPAC pursuant to the Response Dynamics contract with NSPAC were made by NSPAC and/or the Washington Intelligence Bureau directly to each company. If no, state whether payments to vendors were made through Response Dynamics.

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35. State whether an Escrow Account was ever established by Response Dynamics, pursuant to Section 5(e) of the contract with NSPAC dated April 7, 1986. If yes, state the date on which the Account was established, and list by payee, amount and date the payments made to each of the Companies from that Account.

36. For the period between October 1, 1988 and December 31, 1991, produce all documents related to measures taken by Response Dynamics to collect on debts owed by NSPAC to Response Dynamics and to the other six Companies. If there were measures taken not addressed in documents, please describe in detail.

37. Produce all documents related to negotiation of the contract signed by Response Dynamics on November 7, 1989 with the Republican Challengers Committee ("RCC").

38. Identify the individuals who represented Response Dynamics in the 1989 contract negotiations with the RCC.

39. Identify the individuals who represented the RCC in the 1989 contract negotiations with Response Dynamics.

40. Identify the individuals at Response Dynamics who were primarily responsible for performance of the Company's contract with the RCC dated November 7, 1989.

41. State whether Response Dynamics, as "the Agency," served as the principal contractor for the contract with the RCC.

42. Produce all other written agreements entered into by Response Dynamics with the RCC and with the other six Companies in carrying out the contract with the RCC dated November 7, 1989.

43. If there were no written agreements between Response Dynamics and the other six Companies in carrying out the contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements between or among the Companies related to performance of the contract.

44. Provide a listing of all direct mail and telemarketing projects carried out by the Companies for the RCC between November 7, 1989 and December 31, 1992, together with the dates and costs of each project.

45. Produce copies of all direct mail solicitations produced and mailed pursuant to the Response Dynamics/RCC contract dated November 7, 1989.

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46. Produce copies of all telemarketing scripts used in performance of the Response Dynamics contract with the RCC dated November 7, 1989.

47. For the period between November 7, 1989 and December 31, 1992, provide a listing of all services performed by Response Dynamics itself pursuant to the contract with the RCC dated November 7, 1989.

48. For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by Response Dynamics to the RCC, including both invoices covering work performed or to be performed by Response Dynamics directly and invoices covering work performed or to be performed the other six Companies for which billings were the responsibility of Response Dynamics. State which of the other six Companies sent their invoices directly to the RCC.

49. State whether funds advanced by Response Dynamics for postage, telephone vendors, and other fundraising services were always reimbursed before proceeds from fundraising activities were disbursed to the RCC or to other vendors, pursuant to Section 5(f) of the contract with the RCC dated November 7, 1989. If no, list and describe the instances in which such reimbursements were not made.

50. State how much of the debt presently owed Response Dynamics by the RCC is comprised of unreimbursed advances.

51. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with performance by the seven Companies of the Response Dynamics contract with the RCC dated November 7, 1989. If there were non-written procedures or practices, please describe in detail.

52. State whether the Washington Intelligence Bureau served as "Escrowee" for the Response Dynamics/RCC contract dated November 7, 1989. If no, identify the company which provided this service.

53. Produce all documents related to procedures used for authorization by Response Dynamics and the RCC of payments to vendors by the Escrowee from the Escrow Fund established pursuant to Section 5(c) of the Response Dynamics contract with the RCC dated November 7, 1989. If there are non-written procedures or practices, please describe in detail.

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54. Describe the policies and practices used by Response Dynamics and the Escrowee to determine at any particular point in time which vendors were to receive payments for services rendered the RCC pursuant to the Response Dynamics contract with the RCC dated November 7, 1989.

55. State whether payments to vendors for services rendered to the RCC pursuant to the Response Dynamics contract with the RCC dated November 7, 1989 were made by the RCC and/or the Washington Intelligence Bureau directly to each company. If no, state whether payments to vendors were made through Response Dynamics.

56. State whether an Escrow Account was ever established by Response Dynamics pursuant to Section 5(e) of the contract with the RCC dated November 7, 1989. If yes, state the date on which the Account was established and list by payee, amount and date, the payments made to each of the Companies from that Account.

57. For the period between November 7, 1989 and December 31, 1992, produce all documents related to measures taken by Response Dynamics to collect on debts owed by the RCC to Response Dynamics and to the other six Companies. If there were measures taken which are not addressed in documents, please describe in detail.

58. For the period between April, 1986 and December, 1992, produce all contracts or other agreements entered into by Response Dynamics with clients other than NSPAC and the RCC for the provision of direct mail and/or telecommunications services.

59. For the period between April, 1986 and December, 1992, produce all documents related to extensions of credit to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and/or telecommunications services.

60. State the highest amount of debt owed Response Dynamics ever accrued by each of the clients whose contracts are provided in response to Request 58 above, and whether and when Response Dynamics made the determination not to extend further credit to each of these clients.

61. Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for Agency commissions on list rentals or rights to list rental income as compensation.

62. Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for sole Agency ownership of all lists created under their contracts.

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MUR 3669

Response Dynamics, Inc.

Page 13

63. Identify all clients of Response Dynamics besides the RCC whose contracts have provided for unlimited use by the client, without payment, of lists created pursuant to their contracts.

64. Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for yearly cost of living adjustments.

65. State the Companies' joint average client debt to total income ratio for each business year from 1988 to 1992.

66. State Response Dynamics' average client debt to total income ratio for each business year from 1988 to 1992.

67. State Response Dynamics' client debt to total income ratio for each of the clients identified in response to Request 58.

68. Produce all documents related to:

(a) Calculations of the debt to total income ratios resulting from the Companies' joint performance of the April 7, 1986 contract with NSPAC and from Response Dynamics' own performance under this contract.

(b) Calculations of the average debt to total income ratio of the seven Companies jointly and of Response Dynamics alone;

(c) Calculations of the Companies' joint debt to total income ratios related to clients named in response to Request 58 above.

(d) Calculations of Response Dynamics' debt to total income ratios related to clients named in response to Request 58 above.

69. State all categories of income available to Response Dynamics from use of the Americans for Bush mailing list.

70. State by category of income and year the amounts of gross and net income received by Response Dynamics from use of the Americans for Bush mailing list.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Response Dynamics, Inc. as surviving entity of merger with  
American Telephone Marketing Group, Inc.  
c/o William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

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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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 2

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 3<sup>rd</sup>,  
day of October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachments

Interrogatories and Requests for Documents

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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 3

### 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.

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.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 4

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc.; Direct Response Data Management Service, Inc.; American Telephone Marketing Group, Inc.; The Best Lists, Inc.; American Graphic Design, a division of Response Dynamics, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc.

"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.

"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.

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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 5

"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.

"Shared clients" or "clients shared by the Companies" shall mean clients who have contracted for the services of two or more of the Companies for a particular direct mail or telemarketing project or series of such projects.

"The Agency" shall mean the vendor corporation designated as such in the contract entered into by Response Dynamics, Inc. and the National Security Political Action Committee ("NSPAC") on April 7, 1986 and/or the contract entered into by Response Dynamics, Inc. and the Republican Challengers Committee ("RCC") on November 7, 1989.

#### INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. Describe the present legal status of American Telephone Marketing Group, Inc. ("ATMG"). If this company has merged with, or been sold to, Response Dynamics, Inc., provide the date of the merger or sale and state whether Response Dynamics has assumed the debts and obligations of ATMG. If there has been some other outcome with regard to ATMG, please explain.
2. Produce a copy of any merger or sale agreement entered into by Response Dynamics and American Telephone Marketing Group.
3. For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business arrangements among Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc., with regard to the provision of services for clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.
4. For the period from January 1, 1986 to December 31, 1992, state whether Response Dynamics ever served as the principal contractor and ATMG as a sub-contractor when two or more Companies, including ATMG, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.



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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 6

5. For the period from January 1, 1986 to December 31, 1992, state whether there were instances in which Response Dynamics did not serve as the principal contractor and ATMG as a sub-contractor when two or more Companies, including ATMG, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.

6. For the period from January 1, 1986 to December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for ATMG to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether a separate contract or agreement was signed by ATMG.

7. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of ATMG with regard to extensions of credit to clients which it shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of ATMG concerning limits on accrued amounts of debt owed to ATMG by clients shared with other Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued, and/or limits on payment time periods, please describe in detail.

8. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of ATMG with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of ATMG with regard to limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.



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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 7

9. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of ATMG with regard to billing and payment policies applied to clients shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.
10. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies of ATMG with regard to billing and payment policies applied to clients not shared with other Companies. If there were non-written policies or practices concerning billing and payment procedures, please describe in detail.
11. In situations in which clients were shared by ATMG with other Companies, state whether ATMG usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for ATMG to send its invoices through Response Dynamics, Inc.
12. In situations in which clients were shared by ATMG with other Companies, state whether clients usually and normally made payments directly to ATMG. If no, state whether it was usual and normal business practice in such situations for clients to make their payments to ATMG through Response Dynamics.
13. For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by ATMG to collect on debts owed by clients.
14. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the business relationship between ATMG and Response Dynamics with regard to services provided the National Security Political Action Committee ("NSPAC") pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986.
15. State whether Response Dynamics, as "the Agency," served as the principal contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.
16. State whether ATMG served as a sub-contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.
17. For the period between April 7, 1986 and December 31, 1991, produce all contracts or other agreements, in addition to the letter of agreement dated April 28, 1986, which ATMG entered into with NSPAC directly.

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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 8

18. For the period between April 7, 1986 and December 31, 1991, if there were no written agreements between ATMG and NSPAC in addition to the letter of agreement dated April 28, 1986, provide detailed descriptions of any oral agreements in this regard.

19. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with NSPAC on behalf of ATMG in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.

20. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with ATMG in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.

21. If there were no written agreements between Response Dynamics and ATMG regarding performance of the Response Dynamics contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements in this regard.

22. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented ATMG in direct contract or payment negotiations with NSPAC.

23. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented NSPAC in direct contract and/or payment negotiations with ATMG.

24. Identify the individuals who represented ATMG in any contract and/or other negotiations with Response Dynamics related to the Response Dynamics contract with NSPAC date April 7, 1986.

25. Identify the individuals who represented Response Dynamics in any contract or other negotiations with ATMG related to the Response Dynamics contract with NSPAC date April 7, 1986.

26. Produce all documents related to decisions taken by ATMG in 1988, 1989, 1990 and 1991 to take part in new direct mail or telephone solicitation projects for NSPAC, pursuant either to the NSPAC/Response Dynamics contract dated April 7, 1986 and/or to any separate contract or other agreement between ATMG and NSPAC.

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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 9

27. For the period between October 1, 1988 and December 31, 1991, list all services performed by ATMG for NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between ATMG and NSPAC, including the dates and costs of each project.

28. Identify the individuals primarily responsible for performance of ATMG's commitments to NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between ATMG and NSPAC.

29. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the billing procedures used by ATMG during performance of its responsibilities pursuant the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to a separate contract or other agreement between ATMG and NSPAC.

30. For the period between April 7, 1986 and December 31, 1991, produce all invoices sent by ATMG to NSPAC. State whether these invoices were sent to NSPAC directly. If no, state whether these invoices were sent through Response Dynamics.

31. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with ATMG's performance of its responsibilities pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between ATMG and NSPAC.

32. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between ATMG and NSPAC, were received directly from the Washington Intelligence Bureau. If no, state whether they were received through Response Dynamics.

33. For the period between October 1, 1988 and December 31, 1991, produce all documents related to steps taken by ATMG to collect on debt owed that company by NSPAC.

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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 10

34. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the business relationships between ATMG and Response Dynamics with regard to services provided the Republican Challengers Committee ("RCC") pursuant to the contract between Response Dynamics, Inc. and the RCC dated November 7, 1989.

35. State whether Response Dynamics, as "the Agency," served as the principal contractor for Response Dynamics contract with the RCC dated November 7, 1989.

36. State whether ATMG served as a sub-contractor for the Response Dynamics contract with the RCC dated November 7, 1989.

37. For the period between November 7, 1989 and December 31, 1992, produce all contracts or other agreements entered into by ATMG with the RCC directly.

38. If there were no written agreements between ATMG and the RCC regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

39. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with the RCC on behalf of ATMG in carrying out the Response Dynamics contract with NSPAC dated November 7, 1989.

40. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with ATMG in carrying out the Response Dynamics contract with the RCC dated November 7, 1989.

41. If there were no written agreements between Response Dynamics and ATMG regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

42. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented ATMG in any direct contract or payment negotiations with the RCC.

43. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented NSPAC in any direct contract or payment negotiations with ATMG.



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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 11

44. For the period between November 7, 1989 and December 31, 1992, list all services performed by ATMG for the RCC pursuant to the contract between NSPAC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between ATMG and the RCC, including the dates and costs of each project.

45. Identify the individuals primarily responsible for performance of ATMG's commitments to the RCC pursuant to the contract between the RCC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between ATMG and the RCC.

46. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the billing procedures used by ATMG during performance of its responsibilities under the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between ATMG and the RCC.

47. For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by ATMG to the RCC. State whether these invoices were sent to the RCC directly. If no, state whether these invoices were sent through Response Dynamics.

48. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with ATMG's performance of its responsibilities pursuant to the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between ATMG and the RCC.

49. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated November 7, 1989, and/or to any separate contract or other agreement between ATMG and the RCC, were received directly. If no, state whether they were received through Response Dynamics.

50. For the period between November 7, 1989 and December 31, 1992, produce all documents related to steps taken by ATMG to collect on debt owed that company by the RCC.



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MUR 3638

Response Dynamics, Inc., as surviving entity of merger with  
American Telephone Marketing Group, Inc.

Page 12

51. For the period between April 7, 1986 and December 31, 1992, produce all contracts or other agreements entered into by ATMG with clients other than NSPAC and the RCC for services related to direct mail and telecommunications programs. If there were no written agreements with such other clients, provide detailed descriptions of any oral agreements.

52. For the period between April 7, 1986 and December 31, 1992, produce all documents related to extensions of credit by ATMG to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and telecommunications services.

53. State the highest amount of debt owed ATMG ever accrued by each of the other clients identified in response to Request 49 above, and state whether and when ATMG made the determination not to extend further credit to each of these clients.

54. Provide ATMG's average client debt to total income ratio for each business year from 1988 to 1992.

55. Provide ATMG's client debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

56. Provide ATMG's client debt to total income ratio for each of the clients identified in response to Request 49 above.

57. Provide all documents related to:

(a) Calculations of ATMG's debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

(b) Calculations of the average debt to total income ratio of ATMG.

(c) Calculations of the debt to total income ratios for each of the ATMG clients named in response to Request 49 above.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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)

MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Mid-America Printing Company, Inc.  
c/o William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

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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MUR 3638  
Mid-America Printing Company, Inc.  
Page 2

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 3<sup>rd</sup> ,  
day of October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories and Requests for Documents

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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.

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 respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc.; Direct Response Data Management Service, Inc.; American Telephone Marketing Group, Inc.; The Best Lists, Inc.; American Graphic Design, a division of Response Dynamics, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc.

"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.

"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.

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"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.

"Shared clients" or "clients shared by the Companies" shall mean clients who have contracted for the services of two or more of the Companies for a particular direct mail or telemarketing project or series of such projects.

"The Agency" shall mean the vendor corporation designated as such in the contract entered into by Response Dynamics, Inc. and the National Security Political Action Committee ("NSPAC") on April 7, 1986 and/or the contract entered into by Response Dynamics, Inc. and the Republican Challengers Committee ("RCC") on November 7, 1989.

#### INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business arrangements among Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc. ("Mid-America Printing"), and Fulfillment Management Services, Inc., with regard to the provision of services for clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.
2. For the period from January 1, 1986 to December 31, 1992, state whether Response Dynamics ever served as the principal contractor and Mid-America Printing as a sub-contractor when two or more Companies, including Mid-America Printing were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.
3. For the period from January 1, 1986 to December 31, 1992, state whether there were instances in which Response Dynamics did not serve as the principal contractor and Mid-America Printing as a sub-contractor when two or more Companies, including Mid-America Printing, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.

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4. For the period from January 1, 1986 to December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for Mid-America Printing to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether a separate contract or agreement was signed by Mid-America Printing.

5. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Mid-America Printing with regard to extensions of credit to clients which it shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of Mid-America Printing concerning limits on accrued amounts of debt owed to Mid-America Printing by clients shared with other Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued, and/or limits on payment time periods, please describe in detail.

6. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Mid-America Printing with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Mid-America Printing with regard to limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.

7. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Mid-America Printing with regard to billing and payment policies applied to clients shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

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8. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies of Mid-America Printing with regard to billing and payment policies applied to clients not shared with other Companies. If there were non-written policies or practices concerning billing and payment procedures, please describe in detail.

9. In situations in which clients were shared by Mid-America Printing with other Companies, state whether Mid-America Printing usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for Mid-America Printing to send its invoices through Response Dynamics, Inc.

10. In situations in which clients were shared by Mid-America Printing with other Companies, state whether clients usually and normally made payments directly to Mid-America Printing. If no, state whether it was usual and normal business practice in such situations for clients to make their payments to Mid-America Printing through Response Dynamics.

11. For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by Mid-America Printing to collect on debts owed by clients.

12. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the business relationship between Mid-America Printing and Response Dynamics with regard to services provided the National Security Political Action Committee ("NSPAC") pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986.

13. State whether Response Dynamics, as "the Agency," served as the principal contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.

14. State whether Mid-America Printing served as a sub-contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.

15. For the period between April 7, 1986 and December 31, 1991, produce all contracts or other agreements which Mid-America Printing entered into with NSPAC directly.

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MUR 3638

Mid-America Printing, Inc.

Page 8

16. For the period between April 7, 1986 and December 31, 1991, if there were no written agreements between Mid-America Printing and NSPAC, provide detailed descriptions of any oral agreements in this regard.

17. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with NSPAC on behalf of Mid-America Printing in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.

18. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with Mid-America Printing in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.

19. If there were no written agreements between Response Dynamics and Mid-America Printing regarding performance of the Response Dynamics contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements in this regard.

20. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented Mid-America Printing in any direct contract or payment negotiations with NSPAC.

21. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented NSPAC in any direct contract or payment negotiations with Mid-America Printing.

22. Identify the individuals who represented Mid-America Printing in any contract or other negotiations with Response Dynamics related to the Response Dynamics contract with NSPAC date April 7, 1986.

23. Identify the individuals who represented Response Dynamics in any contract or other negotiations with Mid-America Printing related to the Response Dynamics contract with NSPAC date April 7, 1986.

24. Produce all documents related to decisions taken by Mid-America Printing in 1988, 1989, 1990 and 1991 to take part in new direct mail or telephone solicitation projects for NSPAC, pursuant either to the NSPAC/Response Dynamics contract dated April 7, 1986 and/or to any separate contract or other agreement between Mid-America Printing and NSPAC.



25. For the period between October 1, 1988 and December 31, 1991, list all services performed by Mid-America Printing for NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between Mid-America Printing and NSPAC, including the dates and costs of each project.

26. Identify the individuals primarily responsible for performance of Mid-America Printing commitments to NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between Mid-America Printing and NSPAC.

27. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the billing procedures used by Mid-America Printing during performance of its responsibilities pursuant the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to a separate contract or other agreement between Mid-America Printing and NSPAC.

28. For the period between April 7, 1986 and December 31, 1991, produce all invoices sent by Mid-America Printing to NSPAC. State whether these invoices were sent to NSPAC directly. If no, state whether these invoices were sent through Response Dynamics.

29. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with Mid-America Printing's performance of its responsibilities pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between Mid-America Printing and NSPAC.

30. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between Mid-America Printing and NSPAC, were received directly from the Washington Intelligence Bureau. If no, state whether they were received through Response Dynamics.

31. For the period between October 1, 1988 and December 31, 1991, produce all documents related to steps taken by Mid-America Printing to collect on debt owed that company by NSPAC.



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MUR 3638

Mid-America Printing Company, Inc.

Page 10

32. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the business relationships between Mid-America Printing and Response Dynamics with regard to services provided the Republican Challengers Committee ("RCC") pursuant to the contract between Response Dynamics, Inc. and the RCC dated November 7, 1989.

33. State whether Response Dynamics, as "the Agency," served as the principal contractor for Response Dynamics contract with the RCC dated November 7, 1989.

34. State whether Mid-America Printing served as a sub-contractor for the Response Dynamics contract with the RCC dated November 7, 1989.

35. For the period between November 7, 1989 and December 31, 1992, produce all contracts or other agreements entered into by Mid-America Printing with the RCC directly.

36. If there were no written agreements between Mid-America Printing and the RCC regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

37. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with the RCC on behalf of Mid-America Printing in carrying out the Response Dynamics contract with NSPAC dated November 7, 1989.

38. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with Mid-America Printing in carrying out the Response Dynamics contract with the RCC dated November 7, 1989.

39. If there were no written agreements between Response Dynamics and Mid-America Printing regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

40. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented Mid-America Printing in any direct contract or payment negotiations with the RCC.

41. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented NSPAC in any direct contract or payment negotiations with Mid-America Printing.

MUR 3638

Mid-America Printing Company, Inc.

Page 11

42. For the period between November 7, 1989 and December 31, 1992, list all services performed by Mid-America Printing for the RCC pursuant to the contract between NSPAC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between Mid-America Printing and the RCC, including the dates and costs of each project.

43. Identify the individuals primarily responsible for performance of Mid-America Printing's commitments to the RCC pursuant to the contract between the RCC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between Mid-America Printing and the RCC.

44. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the billing procedures used by Mid-America Printing during performance of its responsibilities under the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between Mid-America Printing and the RCC.

45. For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by Mid-America Printing to the RCC. State whether these invoices were sent to the RCC directly. If no, state whether these invoices were sent through Response Dynamics.

46. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with Mid-America Printing's performance of its responsibilities pursuant to the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between Mid-America Printing and the RCC.

47. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated November 7, 1989, and/or to any separate contract or other agreement between Mid-America Printing and the RCC, were received directly. If no, state whether they were received through Response Dynamics.

48. For the period between November 7, 1989 and December 31, 1992, produce all documents related to steps taken by Mid-America Printing to collect on debt owed that company by the RCC.

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MUR 3638

Mid-America Printing Company, Inc.

Page 12

49. For the period between April 7, 1986 and December 31, 1992, produce all contracts or other agreements entered into by Mid-America Printing with clients other than NSPAC and the RCC for services related to direct mail and telecommunications programs. If there were no written agreements with such other clients, provide detailed descriptions of any oral agreements.

50. For the period between April 7, 1986 and December 31, 1992, produce all documents related to extensions of credit by Mid-America Printing to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and telecommunications services.

51. State the highest amount of debt owed Mid-America Printing ever accrued by each of the other clients identified in response to Request 49 above, and state whether and when Mid-America Printing made the determination not to extend further credit to each of these clients.

52. Provide Mid-America Printing's average client debt to total income ratio for each business year from 1988 to 1992.

53. Provide Mid-America Printing's client debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

54. Provide Mid-America Printing's client debt to total income ratio for each of the clients identified in response to Request 49 above.

55. Provide all documents related to:

(a) Calculations of Mid-America Printing's debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

(b) Calculations of the average debt to total income ratio of Mid-America Printing.

(c) Calculations of the debt to total income ratios for each of the Mid-America Printing clients named in response to Request 49 above.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: American Graphic Design, a division of  
Response Dynamics, Inc.  
c/o William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

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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MUR 3638  
American Graphic Design  
Page 2

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 3<sup>rd</sup>,  
day of October, 1994.

For the Commission,



Trevor Potter  
Chairman

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories and Requests for Documents

9604371156



### 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.

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.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

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"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc., Direct Response Data Management Service, Inc.; American Telephone Marketing Group, Inc.; The Best Lists, Inc.; American Graphic Design, a division of Response Dynamics, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc.

"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.

"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.

9604371138

"Shared clients" or "clients shared by the Companies" shall mean clients who have contracted for the services of two or more of the Companies for a particular direct mail or telemarketing project or series of such projects.

"The Agency" shall mean the vendor corporation designated as such in the contract entered into by Response Dynamics, Inc. and the National Security Political Action Committee ("NSPAC") on April 7, 1986 and/or the contract entered into by Response Dynamics, Inc. and the Republican Challengers Committee ("RCC") on November 7, 1989.

#### INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. Describe the legal status of American Graphic Design from 1986 through the present. State whether it is or has ever been a separate corporate entity or whether it has always functioned as a division of Response Dynamics. If there was a change in the legal status of American Graphic Design during this period, describe the change and state when it occurred.
2. For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business arrangements among Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc., with regard to the provision of services for clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.
3. For the period from January 1, 1986 to December 31, 1992, state whether Response Dynamics ever served as the principal contractor and American Graphic Design as a sub-contractor when two or more Companies, including American Graphic Design, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.
4. For the period from January 1, 1986 to December 31, 1992, state whether there were instances in which Response Dynamics did not serve as the principal contractor and American Graphic Design as a sub-contractor when two or more Companies, including American Graphic Design, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.

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5. For the period from January 1, 1986 to December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for American Graphic Design to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether a separate contract or agreement was signed by American Graphic Design.

6. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of American Graphic Design with regard to extensions of credit to clients which it shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of American Graphic Design concerning limits on accrued amounts of debt owed to American Graphic Design by clients shared with other Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued, and/or limits on payment time periods, please describe in detail.

7. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of American Graphic Design with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of American Graphic Design with regard to limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.

8. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of American Graphic Design with regard to billing and payment policies applied to clients shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.



9. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies of American Graphic Design with regard to billing and payment policies applied to clients not shared with other Companies. If there were non-written policies or practices concerning billing and payment procedures, please describe in detail.

10. In situations in which clients were shared by American Graphic Design with other Companies, state whether American Graphic Design usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for American Graphic Design to send its invoices through Response Dynamics, Inc.

11. In situations in which clients were shared by American Graphic Design with other Companies, state whether clients usually and normally made payments directly to American Graphic Design. If no, state whether it was usual and normal business practice in such situations for clients to make their payments to American Graphic Design through Response Dynamics.

12. For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by American Graphic Design to collect on debts owed by clients.

13. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the business relationship between American Graphic Design and Response Dynamics with regard to services provided the National Security Political Action Committee ("NSPAC") pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986.

14. State whether Response Dynamics, as "the Agency," served as the principal contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.

15. State whether American Graphic Design served as a sub-contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.

16. For the period between April 7, 1986 and December 31, 1991, produce all contracts or other agreements which American Graphic Design entered into with NSPAC directly.

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17. For the period between April 7, 1986 and December 31, 1991, if there were no written agreements between American Graphic Design and NSPAC, provide detailed descriptions of any oral agreements in this regard.

18. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with NSPAC on behalf of American Graphic Design in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.

19. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with American Graphic Design in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.

20. If there were no written agreements between Response Dynamics and American Graphic Design regarding performance of the Response Dynamics contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements in this regard.

21. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented American Graphic Design in any direct contract or payment negotiations with NSPAC.

22. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented NSPAC in any direct contract or payment negotiations with American Graphic Design.

23. Identify the individuals who represented American Graphic Design in any contract or other negotiations with Response Dynamics related to the Response Dynamics contract with NSPAC date April 7, 1986.

24. Identify the individuals who represented Response Dynamics in any contract or other negotiations with American Graphic Design related to the Response Dynamics contract with NSPAC date April 7, 1986.

25. Produce all documents related to decisions taken by American Graphic Design in 1988, 1989, 1990 and 1991 to take part in new direct mail or telephone solicitation projects for NSPAC, pursuant either to the NSPAC/Response Dynamics contract dated April 7, 1986 and/or to any separate contract or other agreement between American Graphic Design and NSPAC.

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26. For the period between October 1, 1988 and December 31, 1991, list all services performed by American Graphic Design for NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between American Graphic Design and NSPAC, including the dates and costs of each project.

27. Identify the individuals primarily responsible for performance of American Graphic Design commitments to NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between American Graphic Design and NSPAC.

28. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the billing procedures used by American Graphic Design during performance of its responsibilities pursuant the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to a separate contract or other agreement between American Graphic Design and NSPAC.

29. For the period between April 7, 1986 and December 31, 1991, produce all invoices sent by American Graphic Design to NSPAC. State whether these invoices were sent to NSPAC directly. If no, state whether these invoices were sent through Response Dynamics.

30. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with American Graphic Design performance of its responsibilities pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between American Graphic Design and NSPAC.

31. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between American Graphic Design and NSPAC, were received directly from the Washington Intelligence Bureau. If no, state whether they were received through Response Dynamics.

32. For the period between October 1, 1988 and December 31, 1991, produce all documents related to steps taken by American Graphic Design to collect on debt owed that company by NSPAC.

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33. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the business relationships between American Graphic Design and Response Dynamics with regard to services provided the Republican Challengers Committee ("RCC") pursuant to the contract between Response Dynamics, Inc. and the RCC dated November 7, 1989.

34. State whether Response Dynamics, as "the Agency," served as the principal contractor for Response Dynamics contract with the RCC dated November 7, 1989.

35. State whether American Graphic Design served as a sub-contractor for the Response Dynamics contract with the RCC dated November 7, 1989.

36. For the period between November 7, 1989 and December 31, 1992, produce all contracts or other agreements entered into by American Graphic Design with the RCC directly.

37. If there were no written agreements between American Graphic Design and the RCC regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

38. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with the RCC on behalf of American Graphic Design in carrying out the Response Dynamics contract with NSPAC dated November 7, 1989.

39. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with American Graphic Design in carrying out the Response Dynamics contract with the RCC dated November 7, 1989.

40. If there were no written agreements between Response Dynamics and American Graphic Design regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

41. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented American Graphic Design in any direct contract or payment negotiations with the RCC.

42. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented NSPAC in any direct contract or payment negotiations with American Graphic Design.

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43. For the period between November 7, 1989 and December 31, 1992, list all services performed by American Graphic Design for the RCC pursuant to the contract between NSPAC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between American Graphic Design and the RCC, including the dates and costs of each project.
44. Identify the individuals primarily responsible for performance of American Graphic Design's commitments to the RCC pursuant to the contract between the RCC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between American Graphic Design and the RCC.
45. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the billing procedures used by American Graphic Design during performance of its responsibilities under the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between American Graphic Design and the RCC.
46. For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by American Graphic Design to the RCC. State whether these invoices were sent to the RCC directly. If no, state whether these invoices were sent through Response Dynamics.
47. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with American Graphic Design's performance of its responsibilities pursuant to the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between American Graphic Design and the RCC.
48. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated November 7, 1989, and/or to any separate contract or other agreement between American Graphic Design and the RCC, were received directly. If no, state whether they were received through Response Dynamics.
49. For the period between November 7, 1989 and December 31, 1992, produce all documents related to steps taken by American Graphic Design to collect on debt owed that company by the RCC.



50. For the period between April 7, 1986 and December 31, 1992, produce all contracts or other agreements entered into by American Graphic Design with clients other than NSPAC and the RCC for services related to direct mail and telecommunications programs. If there were no written agreements with such other clients, provide detailed descriptions of any oral agreements.

51. For the period between April 7, 1986 and December 31, 1992, produce all documents related to extensions of credit by American Graphic Design to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and telecommunications services.

52. State the highest amount of debt owed American Graphic Design ever accrued by each of the other clients identified in response to Request 49 above, and state whether and when American Graphic Design made the determination not to extend further credit to each of these clients.

53. Provide American Graphic Design's average client debt to total income ratio for each business year from 1988 to 1992.

54. Provide American Graphic Design's client debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

55. Provide American Graphic Design's client debt to total income ratio for each of the clients identified in response to Request 49 above.

56. Provide all documents related to:

(a) Calculations of American Graphic Design's debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

(b) Calculations of the average debt to total income ratio of American Graphic Design.

(c) Calculations of the debt to total income ratios for each of the American Graphic Design clients named in response to Request 49 above.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: The Best Lists, Inc.  
c/o William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

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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MUR 3638  
The Best Lists, Inc.  
Page 2

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 3<sup>rd</sup>  
day of October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories and Requests for Documents

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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.

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.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

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"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc.; Direct Response Data Management Service, Inc.; American Telephone Marketing Group, Inc.; The Best Lists, Inc.; American Graphic Design, a division of Response Dynamics, Inc.; Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc.

"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.

"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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"Shared clients" or "clients shared by the Companies" shall mean clients who have contracted for the services of two or more of the Companies for a particular direct mail or telemarketing project or series of such projects.

"The Agency" shall mean the vendor corporation designated as such in the contract entered into by Response Dynamics, Inc. and the National Security Political Action Committee ("NSPAC") on April 7, 1986 and/or the contract entered into by Response Dynamics, Inc. and the Republican Challengers Committee ("RCC") on November 7, 1989.

INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business arrangements among Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc. ("Best Lists"), American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc., with regard to the provision of services for clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.
2. For the period from January 1, 1986 to December 31, 1992, state whether Response Dynamics ever served as the principal contractor and Best Lists as a sub-contractor when two or more Companies, including Best Lists were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.
3. For the period from January 1, 1986 to December 31, 1992, state whether there were instances in which Response Dynamics did not serve as the principal contractor and Best Lists as a sub-contractor when two or more Companies, including Best Lists, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.



4. For the period from January 1, 1986 to December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for Best Lists to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether a separate contract or agreement was signed by Best Lists.

5. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Best Lists with regard to extensions of credit to clients which it shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of Best Lists concerning limits on accrued amounts of debt owed to Best Lists by clients shared with other Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued, and/or limits on payment time periods, please describe in detail.

6. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Best Lists with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Best Lists with regard to limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.

7. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Best Lists with regard to billing and payment policies applied to clients shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

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8. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies of Best Lists with regard to billing and payment policies applied to clients not shared with other Companies. If there were non-written policies or practices concerning billing and payment procedures, please describe in detail.
9. In situations in which clients were shared by Best Lists with other Companies, state whether Best Lists usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for Best Lists to send its invoices through Response Dynamics, Inc.
10. In situations in which clients were shared by Best Lists with other Companies, state whether clients usually and normally made payments directly to Best Lists. If no, state whether it was usual and normal business practice in such situations for clients to make their payments to Best Lists through Response Dynamics.
11. For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by Best Lists to collect on debts owed by clients.
12. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the business relationship between Best Lists and Response Dynamics with regard to services provided the National Security Political Action Committee ("NSPAC") pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986.
13. State whether Response Dynamics, as "the Agency," served as the principal contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.
14. State whether Best Lists served as a sub-contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.
15. For the period between April 7, 1986 and December 31, 1991, produce all contracts or other agreements which Best Lists entered into with NSPAC directly.

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16. For the period between April 7, 1986 and December 31, 1991, if there were no written agreements between Best Lists and NSPAC, provide detailed descriptions of any oral agreements in this regard.
17. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with NSPAC on behalf of Best Lists in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.
18. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with Best Lists in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.
19. If there were no written agreements between Response Dynamics and Best Lists regarding performance of the Response Dynamics contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements in this regard.
20. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented Best Lists in any direct contract or payment negotiations with NSPAC.
21. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented NSPAC in any direct contract or payment negotiations with Best Lists.
22. Identify the individuals who represented Best Lists in any contract or other negotiations with Response Dynamics related to the Response Dynamics contract with NSPAC date April 7, 1986.
23. Identify the individuals who represented Response Dynamics in any contract or other negotiations with Best Lists related to the Response Dynamics contract with NSPAC date April 7, 1986.
24. Produce all documents related to decisions taken by Best Lists in 1988, 1989, 1990 and 1991 to take part in new direct mail or telephone solicitation projects for NSPAC, pursuant either to the NSPAC/Response Dynamics contract dated April 7, 1986 and/or to any separate contract or other agreement between Best Lists and NSPAC.

25. For the period between October 1, 1988 and December 31, 1991, list all services performed by Best Lists for NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between Best Lists and NSPAC, including the dates and costs of each project.

26. Identify the individuals primarily responsible for performance of Best Lists commitments to NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between Best Lists and NSPAC.

27. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the billing procedures used by Best Lists during performance of its responsibilities pursuant the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to a separate contract or other agreement between Best Lists and NSPAC.

28. For the period between April 7, 1986 and December 31, 1991, produce all invoices sent by Best Lists to NSPAC. State whether these invoices were sent to NSPAC directly. If no, state whether these invoices were sent through Response Dynamics.

29. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with Best Lists' performance of its responsibilities pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between Best Lists and NSPAC.

30. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between Best Lists and NSPAC, were received directly from the Washington Intelligence Bureau. If no, state whether they were received through Response Dynamics.

31. For the period between October 1, 1988 and December 31, 1991, produce all documents related to steps taken by Best Lists to collect on debt owed that company by NSPAC.

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32. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the business relationships between Best Lists and Response Dynamics with regard to services provided the Republican Challengers Committee ("RCC") pursuant to the contract between Response Dynamics, Inc. and the RCC dated November 7, 1989.

33. State whether Response Dynamics, as "the Agency," served as the principal contractor for Response Dynamics contract with the RCC dated November 7, 1989.

34. State whether Best Lists served as a sub-contractor for the Response Dynamics contract with the RCC dated November 7, 1989.

35. For the period between November 7, 1989 and December 31, 1992, produce all contracts or other agreements entered into by Best Lists with the RCC directly.

36. If there were no written agreements between Best Lists and the RCC regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

37. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with the RCC on behalf of Best Lists in carrying out the Response Dynamics contract with NSPAC dated November 7, 1989.

38. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with Best Lists in carrying out the Response Dynamics contract with the RCC dated November 7, 1989.

39. If there were no written agreements between Response Dynamics and Best Lists regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

40. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented Best Lists in any direct contract or payment negotiations with the RCC.

41. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented NSPAC in any direct contract or payment negotiations with Best Lists.

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42. For the period between November 7, 1989 and December 31, 1992, list all services performed by Best Lists for the RCC pursuant to the contract between NSPAC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between Best Lists and the RCC, including the dates and costs of each project.

43. Identify the individuals primarily responsible for performance of Best Lists' commitments to the RCC pursuant to the contract between the RCC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between Best Lists and the RCC.

44. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the billing procedures used by Best Lists during performance of its responsibilities under the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between Best Lists and the RCC.

45. For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by Best Lists to the RCC. State whether these invoices were sent to the RCC directly. If no, state whether these invoices were sent through Response Dynamics.

46. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with Best List's performance of its responsibilities pursuant to the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between Best Lists and the RCC.

47. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated November 7, 1989, and/or to any separate contract or other agreement between Best Lists and the RCC, were received directly. If no, state whether they were received through Response Dynamics.

48. For the period between November 7, 1989 and December 31, 1992, produce all documents related to steps taken by Best Lists to collect on debt owed that company by the RCC.

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49. For the period between April 7, 1986 and December 31, 1992, produce all contracts or other agreements entered into by Best Lists with clients other than NSPAC and the RCC for services related to direct mail and telecommunications programs. If there were no written agreements with such other clients, provide detailed descriptions of any oral agreements.

50. For the period between April 7, 1986 and December 31, 1992, produce all documents related to extensions of credit by Best Lists to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and telecommunications services.

51. State the highest amount of debt owed Best Lists ever accrued by each of the other clients identified in response to Request 49 above, and state whether and when Best Lists made the determination not to extend further credit to each of these clients.

52. Provide Best Lists' average client debt to total income ratio for each business year from 1988 to 1992.

53. Provide Best Lists' client debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

54. Provide Best Lists' client debt to total income ratio for each of the clients identified in response to Request 49 above.

55. Provide all documents related to:

(a) Calculations of Best Lists' debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

(b) Calculations of the average debt to total income ratio of Best Lists.

(c) Calculations of the debt to total income ratios for each of the Best Lists clients named in response to Request 49 above.

9604371178

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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)

MUR 3638

**SUBPOENA TO PRODUCE DOCUMENTS**  
**ORDER TO SUBMIT WRITTEN ANSWERS**

TO: Direct Response Data Management Service, Inc.  
c/o William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

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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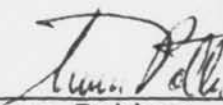
MUR 3638

Direct Response Data Management Service, Inc.

Page 2

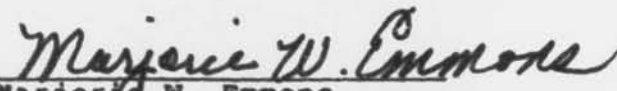
WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 3rd  
day of October, 1994.

For the Commission,



Trevor Potter  
Chairman

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories  
Document Request

9604377118C

### 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.

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.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:



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MUR 3638

Direct Response Data Management Service, Inc.

Page 4

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc.; Direct Response Data Management Service, Inc.; American Telephone Marketing Group, Inc.; The Best Lists, Inc.; American Graphic Design, a division of Response Dynamics, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc.

"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.

"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.

MUR 3638

Direct Response Data Management Service, Inc.

Page 5

"Clients shared by the Companies" shall mean clients who have contracted for the services of two or more of the Companies for a particular direct mail or telemarketing project or series of such projects.

"The Agency" shall mean the vendor corporation designated as such in the contract entered into by Response Dynamics, Inc. and the National Security Political Action Committee ("NSPAC") on April 7, 1986 and/or the contract entered into by Response Dynamics, Inc. and the Republican Challengers Committee ("RCC") on November 7, 1989.

#### INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business arrangements among Response Dynamics, Inc., Direct Response Data Management Service, Inc. ("Direct Response Data"), American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc., with regard to the provision of services for clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.

2. For the period from January 1, 1986 to December 31, 1992, state whether Response Dynamics ever served as the principal contractor and Direct Response Data as a sub-contractor when two or more Companies, including Direct Response Data, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.

3. For the period from January 1, 1986 to December 31, 1992, state whether there were instances in which Response Dynamics did not serve as the principal contractor and Direct Response Data as a sub-contractor when two or more Companies, including Direct Response Data, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.

4. For the period from January 1, 1986 to December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for Direct Response Data to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether a separate contract or agreement was signed by Direct Response Data.

5. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Direct Response Data with regard to extensions of credit to clients which it shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of Direct Response Data concerning limits on accrued amounts of debt owed to Direct Response Data by clients shared with other Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued, and/or limits on payment time periods, please describe in detail.

6. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Direct Response Data with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Direct Response Data with regard to limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.

7. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Direct Response Data with regard to billing and payment policies applied to clients shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

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8. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies of Direct Response Data with regard to billing and payment policies applied to clients not shared with other Companies. If there were non-written policies or practices concerning billing and payment procedures, please describe in detail.
  9. In situations in which clients were shared by Direct Response Data with other Companies, state whether Direct Response Data usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for Direct Response Data to send its invoices through Response Dynamics, Inc.
  10. In situations in which clients were shared by Direct Response Data with other Companies, state whether clients usually and normally made payments directly to Direct Response Data. If no, state whether it was usual and normal business practice in such situations for clients to make their payments to Direct Response Data through Response Dynamics.
  11. For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by Direct Response Data to collect on debts owed by clients.
  12. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the business relationship between Direct Response Data and Response Dynamics with regard to services provided the National Security Political Action Committee ("NSPAC") pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986.
  13. State whether Response Dynamics, as "the Agency," served as the principal contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.
  14. State whether Direct Response Data served as a sub-contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.
  15. For the period between April 7, 1986 and December 31, 1991, produce all contracts or other agreements which Direct Response Data entered into with NSPAC directly.
  16. For the period between April 7, 1986 and December 31, 1991, if there were no written agreements between Direct Response Data and NSPAC, provide detailed descriptions of any oral agreements in this regard.



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MUR 3638

Direct Response Data Management Service, Inc.

Page 8

17. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with NSPAC on behalf of Direct Response Data in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.
18. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with Direct Response Data in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.
19. If there were no written agreements between Response Dynamics and Direct Response Data regarding performance of the Response Dynamics contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements in this regard.
20. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented Direct Response Data in any direct contract or payment negotiations with NSPAC.
21. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented NSPAC in any direct contract or payment negotiations with Direct Response Data.
22. Identify the individuals who represented Direct Response Data in any contract or other negotiations with Response Dynamics related to the Response Dynamics contract with NSPAC date April 7, 1986.
23. Identify the individuals who represented Response Dynamics in any contract or other negotiations with Direct Response Data related to the Response Dynamics contract with NSPAC date April 7, 1986.
24. Produce all documents related to decisions taken by Direct Response Data in 1988, 1989, 1990 and 1991 to take part in new direct mail or telephone solicitation projects for NSPAC, pursuant either to the NSPAC/Response Dynamics contract dated April 7, 1986 and/or to any separate contract or other agreement between Direct Response Data and NSPAC.
25. For the period between October 1, 1988 and December 31, 1991, list all services performed by Direct Response Data for NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between Direct Response Data and NSPAC, including the dates and costs of each project.



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MUR 3638

Direct Response Data Management Service, Inc.

Page 9

26. Identify the individuals primarily responsible for performance of Direct Response Data's commitments to NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between Direct Response Data and NSPAC.

27. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the billing procedures used by Direct Response Data during performance of its responsibilities pursuant the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to a separate contract or other agreement between Direct Response Data and NSPAC.

28. For the period between April 7, 1986 and December 31, 1991, produce all invoices sent by Direct Response Data to NSPAC. State whether these invoices were sent to NSPAC directly. If no, state whether these invoices were sent through Response Dynamics.

29. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with Direct Response Data's performance of its responsibilities pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between Direct Response Data and NSPAC.

30. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between Direct Response Data and NSPAC, were received directly from the Washington Intelligence Bureau. If no, state whether they were received through Response Dynamics.

31. For the period between October 1, 1988 and December 31, 1991, produce all documents related to steps taken by Direct Response Data to collect on debt owed that company by NSPAC.

32. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the business relationships between Direct Response Data and Response Dynamics with regard to services provided the Republican Challengers Committee ("RCC") pursuant to the contract between Response Dynamics, Inc. and the RCC dated November 7, 1989.

33. State whether Response Dynamics, as "the Agency," served as the principal contractor for Response Dynamics contract with the RCC dated November 7, 1989.

MUR 3638

Direct Response Data Management Service, Inc.

Page 10

34. State whether Direct Response Data served as a sub-contractor for the Response Dynamics contract with the RCC dated November 7, 1989.
35. For the period between November 7, 1989 and December 31, 1992, produce all contracts or other agreements entered into by Direct Response Data with the RCC directly.
36. If there were no written agreements between Direct Response Data and the RCC regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.
37. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with the RCC on behalf of Direct Response Data in carrying out the Response Dynamics contract with NSPAC dated November 7, 1989.
38. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with Direct Response Data in carrying out the Response Dynamics contract with the RCC dated November 7, 1989.
39. If there were no written agreements between Response Dynamics and Direct Response Data regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.
40. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented Direct Response Data in any direct contract or payment negotiations with the RCC.
41. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented NSPAC in any direct contract or payment negotiations with Direct Response Data.
42. For the period between November 7, 1989 and December 31, 1992, list all services performed by Direct Response Data for the RCC pursuant to the contract between NSPAC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between Direct Response Data and the RCC, including the dates and costs of each project.
43. Identify the individuals primarily responsible for performance of Direct Response Data's commitments to the RCC pursuant to the contract between the RCC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between Direct Response Data and the RCC.

44. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the billing procedures used by Direct Response Data during performance of its responsibilities under the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between Direct Response Data and the RCC.

45. For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by Direct Response Data to the RCC. State whether these invoices were sent to the RCC directly. If no, state whether these invoices were sent through Response Dynamics.

46. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with Direct Response Data's performance of its responsibilities pursuant to the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between Direct Response Data and the RCC.

47. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated November 7, 1989, and/or to any separate contract or other agreement between Direct Response Data and the RCC, were received directly. If no, state whether they were received through Response Dynamics.

48. For the period between November 7, 1989 and December 31, 1992, produce all documents related to steps taken by Direct Response Data to collect on debt owed that company by the RCC.

49. For the period between April 7, 1986 and December 31, 1992, produce all contracts or other agreements entered into by Direct Response Data with clients other than NSPAC and the RCC for services related to direct mail and telecommunications programs. If there were no written agreements with such other clients, provide detailed descriptions of any oral agreements.

50. For the period between April 7, 1986 and December 31, 1992, produce all documents related to extensions of credit by Direct Response Data to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and telecommunications services.

51. State the highest amount of debt owed Direct Response Data ever accrued by each of the other clients identified in response to Request 49 above, and state whether and when Direct Response Data made the determination not to extend further credit to each of these clients.

MUR 3638

Direct Response Data Management Service, Inc.

Page 12

52. Provide Direct Response Data's average client debt to total income ratio for each business year from 1988 to 1992.

53. Provide Direct Response Data's client debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

54. Provide Direct Response Data's client debt to total income ratio for each of the clients identified in response to Request 49 above.

55. Provide all documents related to:

(a) Calculations of Direct Response Data's debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

(b) Calculations of the average debt to total income ratio of Direct Response Data.

(c) Calculations of the debt to total income ratios for each of the Direct Response Data clients named in response to Request 49 above.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Fulfillment Management Services, Inc.  
c/o William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

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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MUR 3638  
Fulfillment Management Services, Inc.  
Page 2


WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 3<sup>rd</sup>,  
day of October, 1994.

For the Commission,



Trevor Potter  
Chairman

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories  
Document Requests

96043771122

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.

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 respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc.; Direct Response Data Management Service, Inc.; American Telephone Marketing Group, Inc.; The Best Lists, Inc.; American Graphic Design, a division of Response Dynamics; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc.

"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.

"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.

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"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.

"Shared clients" or "clients shared by the Companies" shall mean clients who have contracted for the services of two or more of the Companies for a particular direct mail or telemarketing project or series of such projects.

"The Agency" shall mean the vendor corporation designated as such in the contract entered into by Response Dynamics, Inc. and the National Security Political Action Committee ("NSPAC") on April 7, 1986 and/or the contract entered into by Response Dynamics, Inc. and the Republican Challengers Committee ("RCC") on November 7, 1989.

INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business arrangements among Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc. ("Fulfillment Management"), with regard to the provision of services for clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.
2. For the period from January 1, 1986 to December 31, 1992, state whether Response Dynamics ever served as the principal contractor and Fulfillment Management as a sub-contractor when two or more Companies, including Fulfillment Management were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.
3. For the period from January 1, 1986 to December 31, 1992, state whether there were instances in which Response Dynamics did not serve as the principal contractor and Fulfillment Management as a sub-contractor when two or more Companies, including Fulfillment Management, were hired by a client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this particular business arrangement.

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4. For the period from January 1, 1986 to December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for Fulfillment Management to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether a separate contract or agreement was signed by Fulfillment Management.

5. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Fulfillment Management with regard to extensions of credit to clients which it shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of Fulfillment Management concerning limits on accrued amounts of debt owed to Fulfillment Management by clients shared with other Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued, and/or limits on payment time periods, please describe in detail.

6. (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Fulfillment Management with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

(b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Fulfillment Management with regard to limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.

7. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Fulfillment Management with regard to billing and payment policies applied to clients shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.



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MUR 3638

Fulfillment Management Service, Inc.

Page 7

8. For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies of Fulfillment Management with regard to billing and payment policies applied to clients not shared with other Companies. If there were non-written policies or practices concerning billing and payment procedures, please describe in detail.

9. In situations in which clients were shared by Fulfillment Management with other Companies, state whether Fulfillment Management usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for Fulfillment Management to send its invoices through Response Dynamics, Inc.

10. In situations in which clients were shared by Fulfillment Management with other Companies, state whether clients usually and normally made payments directly to Fulfillment Management. If no, state whether it was usual and normal business practice in such situations for clients to make their payments to Fulfillment Management through Response Dynamics.

11. For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by Fulfillment Management to collect on debts owed by clients.

12. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the business relationship between Fulfillment Management and Response Dynamics with regard to services provided the National Security Political Action Committee ("NSPAC") pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986.

13. State whether Response Dynamics, as "the Agency," served as the principal contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.

14. State whether Fulfillment Management served as a sub-contractor for the Response Dynamics contract with NSPAC dated April 7, 1986.

15. For the period between April 7, 1986 and December 31, 1991, produce all contracts or other agreements which Fulfillment Management entered into with NSPAC directly.

MUR 3638

Fulfillment Management Service, Inc.

Page 8

16. For the period between April 7, 1986 and December 31, 1991, if there were no written agreements between Fulfillment Management and NSPAC, provide detailed descriptions of any oral agreements in this regard.

17. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with NSPAC on behalf of Fulfillment Management in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.

18. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with Fulfillment Management in carrying out the Response Dynamics contract with NSPAC dated April 7, 1986.

19. If there were no written agreements between Response Dynamics and Fulfillment Management regarding performance of the Response Dynamics contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements in this regard.

20. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented Fulfillment Management in any direct contract or payment negotiations with NSPAC.

21. For the period between January 1, 1986 and December 31, 1991, identify the individuals who represented NSPAC in any direct contract or payment negotiations with Fulfillment Management.

22. Identify the individuals who represented Fulfillment Management in any contract or other negotiations with Response Dynamics related to the Response Dynamics contract with NSPAC dated April 7, 1986.

23. Identify the individuals who represented Response Dynamics in any contract or other negotiations with Fulfillment Management related to the Response Dynamics contract with NSPAC dated April 7, 1986.

24. Produce all documents related to decisions taken by Fulfillment Management in 1988, 1989, 1990 and 1991 to take part in new direct mail or telephone solicitation projects for NSPAC, pursuant either to the NSPAC/Response Dynamics contract dated April 7, 1986 and/or to any separate contract or other agreement between Fulfillment Management and NSPAC.

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MUR 3638

Fulfillment Management Service, Inc.

Page 9

25. For the period between October 1, 1988 and December 31, 1991, list all services performed by Fulfillment Management for NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between Fulfillment Management and NSPAC, including the dates and costs of each project.
26. Identify the individuals primarily responsible for performance of Fulfillment Management commitments to NSPAC pursuant to the contract between NSPAC and Response Dynamics dated April 7, 1986, and/or to any separate contract or other agreement between Fulfillment Management and NSPAC.
27. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the billing procedures used by Fulfillment Management during performance of its responsibilities pursuant the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to a separate contract or other agreement between Fulfillment Management and NSPAC.
28. For the period between April 7, 1986 and December 31, 1991, produce all invoices sent by Fulfillment Management to NSPAC. State whether these invoices were sent to NSPAC directly. If no, state whether these invoices were sent through Response Dynamics.
29. For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with Fulfillment Management's performance of its responsibilities pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between Fulfillment Management and NSPAC.
30. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated April 7, 1986, and/or to any separate contract or other agreement between Fulfillment Management and NSPAC, were received directly from the Washington Intelligence Bureau. If no, state whether they were received through Response Dynamics.
31. For the period between October 1, 1988 and December 31, 1991, produce all documents related to steps taken by Fulfillment Management to collect on debt owed that company by NSPAC.

32. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the business relationships between Fulfillment Management and Response Dynamics with regard to services provided the Republican Challengers Committee ("RCC") pursuant to the contract between Response Dynamics, Inc. and the RCC dated November 7, 1989.

33. State whether Response Dynamics, as "the Agency," served as the principal contractor for Response Dynamics contract with the RCC dated November 7, 1989.

34. State whether Fulfillment Management served as a sub-contractor for the Response Dynamics contract with the RCC dated November 7, 1989.

35. For the period between November 7, 1989 and December 31, 1992, produce all contracts or other agreements entered into by Fulfillment Management with the RCC directly.

36. If there were no written agreements between Fulfillment Management and the RCC regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

37. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with the RCC on behalf of Fulfillment Management in carrying out the Response Dynamics contract with NSPAC dated November 7, 1989.

38. Produce all contracts or other agreements which Response Dynamics, as "the Agency," entered into with Fulfillment Management in carrying out the Response Dynamics contract with the RCC dated November 7, 1989.

39. If there were no written agreements between Response Dynamics and Fulfillment Management regarding performance of the Response Dynamics contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements in this regard.

40. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented Fulfillment Management in any direct contract or payment negotiations with the RCC.

41. For the period between September 1, 1989 and December 31, 1992, identify the individuals who represented NSPAC in any direct contract or payment negotiations with Fulfillment Management.

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42. For the period between November 7, 1989 and December 31, 1992, list all services performed by Fulfillment Management for the RCC pursuant to the contract between NSPAC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between Fulfillment Management and the RCC, including the dates and costs of each project.

43. Identify the individuals primarily responsible for performance of Fulfillment Management's commitments to the RCC pursuant to the contract between the RCC and Response Dynamics dated November 7, 1989, and/or to a separate contract or other agreement between Fulfillment Management and the RCC.

44. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the billing procedures used by Fulfillment Management during performance of its responsibilities under the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between Fulfillment Management and the RCC.

45. For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by Fulfillment Management to the RCC. State whether these invoices were sent to the RCC directly. If no, state whether these invoices were sent through Response Dynamics.

46. For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with Fulfillment Management's performance of its responsibilities pursuant to the Response Dynamics contract with the RCC dated November 7, 1989, and/or to any separate contract or other agreement between Fulfillment Management and the RCC.

47. State whether payments made pursuant to the contract between Response Dynamics and NSPAC dated November 7, 1989, and/or to any separate contract or other agreement between Fulfillment Management and the RCC, were received directly. If no, state whether they were received through Response Dynamics.

48. For the period between November 7, 1989 and December 31, 1992, produce all documents related to steps taken by Fulfillment Management to collect on debt owed that company by the RCC.

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MUR 3638

Fulfillment Management Service, Inc.

Page 12

49. For the period between April 7, 1986 and December 31, 1992, produce all contracts or other agreements entered into by Fulfillment Management with clients other than NSPAC and the RCC for services related to direct mail and telecommunications programs. If there were no written agreements with such other clients, provide detailed descriptions of any oral agreements.

50. For the period between April 7, 1986 and December 31, 1992, produce all documents related to extensions of credit by Fulfillment Management to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and telecommunications services.

51. State the highest amount of debt owed Fulfillment Management ever accrued by each of the other clients identified in response to Request 49 above, and state whether and when Fulfillment Management made the determination not to extend further credit to each of these clients.

52. Provide Fulfillment Management's average client debt to total income ratio for each business year from 1988 to 1992.

53. Provide Fulfillment Management's client debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

54. Provide Fulfillment Management's client debt to total income ratio for each of the clients identified in response to Request 49 above.

55. Provide all documents related to:

(a) Calculations of Fulfillment Management's debt to total income ratio resulting from performance of the Response Dynamics contract with NSPAC dated April 7, 1986.

(b) Calculations of the average debt to total income ratio of Fulfillment Management.

(c) Calculations of the debt to total income ratios for each of the Fulfillment Management clients named in response to Request 49 above.

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## FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS:**

Response Dynamics, Inc.	)	
Direct Response Data Management Service, Inc.	)	
American Telephone Marketing Group, Inc.	)	
The Best Lists, Inc.	)	MUR 3638
American Graphic Design	)	
Mid-America Printing Company, Inc.	)	
Fulfillment Management Services, Inc.	)	

## I. GENERATION OF MATTER

This matter was generated by two complaints filed with the Federal Election Commission by the Democratic National Committee on August 12, 1992 and October 5, 1992, and designated MUR 3578 and MUR 3638. The two matters have been merged.

## II. SUMMARY OF ALLEGATIONS

The complaint in MUR 3638 alleges that the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC") have each been extended "commercially unreasonable" credit by seven companies: Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc. ("the Companies"). According to the complaint and attached materials, these allegedly improper extensions of credit began in 1988 in connection with direct mail and telemarketing fundraising services performed for NSPAC by the Companies, and continued into 1992 in the form of

like services performed for the RCC. The complainant alleges that credit extended to NSPAC and to the RCC "has not been extended in the ordinary course of business and the terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." Further, the complaint alleges that "the Vendors have failed to make a commercially reasonable attempt to collect the debts from NSPAC." The complaint notes that Response Dynamics has filed suit against another customer to collect unpaid bills, but not against NSPAC or the RCC.

### III. FACTUAL AND LEGAL ANALYSIS

#### A. INTRODUCTION AND BACKGROUND

The issue addressed in this Analysis is whether the vendor respondents violated 2 U.S.C. § 441b by making in-kind contributions in the form of extensions of credit outside the ordinary course of business.

According to information received by the Commission in the context of MUR 2638 and to the response submitted for all of the corporate respondents in the present matter, Response Dynamics, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., Fulfillment Management Services, Inc., Direct Response Data Management, Inc., and Mid-America Printing, Inc., and American Graphic Design were all founded, and are still owned, by David A. Kunko and Ronald Kanfer. The response to the complaint in MUR 3638 refers to these businesses collectively as "the Companies," as do the affidavits signed by Mr. Kunko and Mr. Kanfer in the present matters and in MUR 2638. According to these affidavits,

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Mr. Kunko is responsible for business and accounting functions, and Mr. Kanfer for creative matters.

Response Dynamics was incorporated in March, 1981 and The Best Lists in November of the same year. The year of American Telephone Marketing Group's incorporation was 1983; this corporation is no longer active, having merged with Response Dynamics in 1990, with Response Dynamics the surviving entity. Mid-America Printing's date of incorporation was December 29, 1986, while Fulfillment Management Service and Direct Response Data Management Service were both incorporated on June 19, 1987.

According to information provided in the context of MUR 2638, American Graphic Design is a division of Response Dynamics. For purposes of this Analysis, American Graphic Design will be treated as a separate entity; however, the Commission's determination as to this company is encompassed in its determination with regard to Response Dynamics. The same is true with regard to American Telephone Marketing Group.

The Companies together perform direct mail, telemarketing, mailing list brokerage, letter production, filing, printing and inserting services. An eighth entity, Washington Intelligence Bureau, which is assertedly not affiliated with the respondent companies, has served as the escrow agent for contributions received as a result of solicitations undertaken on behalf of the Companies' clients.

**B. EXTENSIONS OF CREDIT TO NSPAC and RCC**

**1. The Law**

The Act prohibits any corporation from making a contribution

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or expenditure in connection with any federal election, and any committee from accepting such a prohibited contribution. 2 U.S.C. § 441b.

Prior to June, 1990, the Commission's regulations included within the definition of "contribution" extensions of credit to political committees if the extensions were for a "period of time beyond normal business or trade practice unless the creditor . . . made a commercially reasonable attempt to collect the debt." Former 11 C.F.R. § 100.7(a)(4). Corporations were permitted to extend such credit if it were done in the corporation's ordinary course of business "and the terms [were] substantially similar to extensions made to non-political debtors which [were] of similar risk and size of obligation." Former 11 C.F.R. § 114.10.

These earlier regulations at Sections 100.7 and 114.10 focused in large part upon the duration of extensions of credit. The Commission's revision of this section, which went into effect on June 27, 1990, went beyond the earlier emphasis upon timing to broader emphases upon the "ordinary course of business" and upon comparisons with treatment of non-political clients like those set out at former 11 C.F.R. § 114.10. Present 11 C.F.R. § 100.7(a)(4).

Further, the new regulations incorporated former Section 114.10 into a new 11 C.F.R. § 116.3. This new provision permits both unincorporated and incorporated commercial vendors to extend credit, provided that this is done "in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." 11 C.F.R. § 116.3(a) and (b). This

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new section also spells out the following factors to be considered in the Commission's analysis of whether a vendor has extended credit in its "ordinary course of business": (1) whether the vendor followed its own established procedures and past practice; (2) whether the vendor had received prompt and full payment in the past from the same candidate or committee; and (3) "[w]hether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry." 11 C.F.R. § 116.3(c)

## 2. NSPAC/Vendor Relationships

### a. Terms of Contracts

On April 7, NSPAC signed a 5-year contract with Response Dynamics, as "the Agency," for carrying out a direct response fundraising program. The contract, which appears to have been the vendor's then standard, printed agreement, stated that: Response Dynamics would provide all layouts and copy for a NSPAC direct mail program; coordinate and develop the program; make arrangements with advertising media; and "negotiate and enter into agreements on behalf of the Client for any special material and talent required and for all photography, models, special effects, layouts, artwork, printing and any necessary technical material for use in the direct response fundraising and advertising program." Response Dynamics was given the authority to select all vendors of such materials and services.

The contract further provided that Response Dynamics was to be reimbursed for all advertising costs and expenditures and for "the costs of packaging, shipping, taxes and duties, and telephone calls and telegrams incurred in connection with the performance of

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the Agreement." The company's compensation was to be \$50 for each thousand fundraising packages processed for mailing, 25% of the costs of telephone solicitations, \$2.00 per name for individually typed mailings to donors of \$50 or more, and commissions of 20% of the standard list rental charges and/or exchanges made directly to organizations and of 40% of list rentals made to brokers or agencies. The Best Lists was designated as an agent of Response Dynamics for the last purpose. The contract also provided for a yearly cost of living adjustment.

All solicitation returns were to be sent to "an independent third party" (Washington Intelligence Bureau) which would tabulate all returns, deposit the contributions into an "Escrow Fund," and make disbursements to the "direct mail suppliers" for bills outstanding before funds were transferred to NSPAC.<sup>1</sup> The approvals of Response Dynamics and NSPAC were required for such disbursements. List rental receipts and commissions were to be placed in a separate bank account for use in paying commissions and list rental fees.

The contract provided that Response Dynamics was to render periodic billings which were to be paid "no later than on the due date stated therein." (The Companies' response in MUR 2638 stated that NSPAC was invoiced monthly.) If invoices from Response Dynamics or Best Lists were thirty days or more past due, Response

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1. Given the apparent non-existence in April, 1986 of four of the respondent vendors later related to Response Dynamics, it is not clear from the language of the Response Dynamics/NSPAC agreement exactly what entities are covered by "direct mail suppliers."

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Dynamics was authorized to have list rental income applied to those invoices. The agreement also contained the provision that "if invoices due a creditor(s) for services provided under this Agreement (including the Agency), remains [sic] unpaid ninety (90) or more days past the original invoice date, the Agency shall have the right to direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency for the purpose of tabulation, deposit and disbursement to the creditor(s)." Disbursements from the Escrow Account would be per the signature of an Agency representative. Further, the agreement stated that "any funds advanced by the Agency for postage, telephone vendors and other direct response fund raising services or materials shall be immediately reimbursed the Agency before any returns are disbursed to the [committee] and/or other parties." (The Companies' response in MUR 2638 stated that Response Dynamics was required to pay all postage expenses related to direct mail fundraising in advance; however, the written contract did not contain this provision.)

In recognition of costs to be incurred by Response Dynamics in developing the program, NSPAC agreed to pay the company \$25,000 as liquidated damages for termination of the agreement prior to its expiration date. Upon termination of the agreement, all property and material produced by Response Dynamics was to be considered its property until final payment was made. NSPAC acknowledged the ownership by Response Dynamics of layouts, copy and artwork, and its co-ownership of any and all lists created pursuant to the agreement. Response Dynamics was to be entitled

to unlimited use of such lists during and subsequent to the agreement, with no "payment of any nature whatsoever by the Agency to the Client."

On April 28, 1986, NSPAC entered into a separate letter of agreement with the American Telephone Marketing Group ("ATMG"), another of the seven vendor respondents, for telephone fundraising services, and into a three-party contract with the Washington Intelligence Bureau and ATMG for the provision of escrow services. The letter of agreement with ATMG provided that: the vendor would "perform the telemarketing services at the rate of \$37 per communicator hour; computer letters or mailgrams would be sent to all pledges at the option of ATMG for a cost of \$1.50 per message or \$3.00 per mailgram; "chase" letters could be sent to unproductive pledges at a cost of \$1.10 per letter; The Best Lists would serve as agent of both ATMG and NSPAC in acquiring calling lists; and a third party "Escrowee" would be employed to tabulate returns, deposit funds in an "Escrow Fund" and disburse returns to suppliers before transferring funds to NSPAC.

The three-party contract signed by NSPAC, ATMG, and the Washington Intelligence Bureau stated that: the Bureau would receive returns from the telephone fund raising program; NSPAC and ATMG would "mutually" present to the Bureau invoices of creditors, including their own, for payment by the Bureau; the Bureau would present bills for its services by the 10th of each month for which payment would be due within thirty days; and the Bureau could pay itself without authorization if such payment authorization had not

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been received by the due date. Compensation terms were to be fixed in a separate agreement.

No contracts or letters of agreement have been supplied with regard to the participation of Direct Response Data Management Service, The Best Lists, American Graphic Design, Mid-America Printing Company and Fulfillment Management Services in the NSPAC program. Based upon the Response Dynamics contract and NSPAC's reports, it appears that these companies dealt with NSPAC through Response Dynamics, issued their own invoices and were paid by means of separate checks; however, the terms of payment and other details are not presently available.

**b. Execution - Debts Incurred and Payments Made**

Based upon NSPAC reports, between August 1, 1988 and June, 1991 the patterns of new debt incurred, payments made and net debt outstanding as regards the seven vendors and, separately, other vendors, were as follows:

Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
8/1-31/88	\$950,830	\$429,533	\$1,445,421	\$172,124	\$151,421	\$293,557
9/1-30/88	940,328	860,981	1,524,798	219,569	235,621	349,505
10/1-19/88	475,546	767,851	1,232,492	274,788	236,936	387,357
10/20- 11/28/88	229,032	507,470	902,016 <sup>2</sup>	121,035	384,842	103,704

2. Due to discrepancies between figures in the Committee's 1988 pre-election reports for debts owed at the end of the October 1-19 period and those in its 1988 post-election report for outstanding balances at the beginning of the October 20 - November 28 period, this total is not consistent with that which would result using the \$1,232,016 amount at the end of the preceding period. The Committee's report covering the October 1-19 period was apparently never amended as to debts owed, making it impossible to account for the approximately \$50,000 difference. (\$1,232,492 + \$229,032 - \$507,470 = \$954,054).

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Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
11/29-						
12/31/88	<b>87,522<sup>3</sup></b>	20,729	987,115	46,312	118,103	31,914
1/1-31/89	<b>69,138</b>	80,090	976,162	30,171	2,510	59,575
2/1-28/89	<b>59,590</b>	24,000	1,011,758	13,752	8,677	64,649
3/1-31/89	<b>64,716</b>	43,645	1,032,868	27,835	27,550	64,934
4/1-30/89	19,992	10,600	1,042,138	13,800	5,777	72,958
5/1-31/89	16,638	-0-	1,058,800	15,285	7,056	81,173
6/1-30/89	<b>36,726</b>	2,820	1,092,683	2,877	33,317	50,741
7/1-31/89	<b>39,123</b>	20,040	1,112,753	4,832	19,049	36,724
8/1-31/89	15,883	-0-	1,128,636	4,349	9,003	32,070
9/1-30/89	<b>38,838</b>	1,686	1,165,774	4,160	14,600	21,630 <sup>4</sup>
10/1-31/89	13,756	520	1,174,017	3,584	8,360	16,654 <sup>4</sup>
11/1-30/89	8,088	4,921	1,182,182	5,008	2,460	19,203
12/1-31/89	<b>53,388</b>	24,058	1,211,512	2,059	8,636	12,656
1/1-31/90	<b>32,635</b>	44,373	1,199,774	5,877	8,284	16,813
2/1-28/90	<b>37,085</b>	21,825	1,215,034	8,733	1,704	23,842
3/1-31/90	8,407	12,919	1,210,522	1,993	2,348	23,488
4/1-30/90	18,831	5,000	1,224,353	2,062	870	24,680
5/1-31/90	10,011	10,929	1,223,434	2,991	5,386	22,284
6/1-30/90	21,151	9,203	1,235,383	1,116 <sup>5</sup>	2,936	20,464
7/1-31/90	7,569	16,388	1,226,564	8,194 <sup>5</sup>	4,074	24,584
8/1-31/90	10,792	10,518	1,226,841	848	5,840	19,592
9/1-30/90	5,209	4,778	1,227,269	3,383	1,184	21,790
10/1-17/90	6,543	3,481	1,230,330	709	-0-	22,500
10/18-						
11/28/90	14,574	5,938	1,239,276	1,656	3,830	20,327
11/29-						
12/31/90	10,836	377	1,249,774	6,978	626	26,680
1/1-31/91	4,562	5,159	1,249,179	1,189	1,833	26,035
2/1-28/91	<b>61,890</b>	45,563	1,265,510	1,089	2,431	24,693
3/1-31/91	17,670	10,400	1,272,777	1,488	1,234	24,946
4/1-30/91	4,336	8,000	1,269,113	-0-	-0-	24,946
5/1-31/91	1,326	1,500	1,268,939	785	-0-	25,732
6/1-30/91	-0-	-0-	1,268,939	-0-	1,807	23,924

At the end of July, 1988, debt owed all seven vendors totaled \$874,125. Reported new debt incurred between August 1 and

3. Certain figures have been indicated in bold type for emphasis.

4. One debt of \$200 disappeared from the Committee's reports between September and October. No expenditure related to this debt was reported.

5. \$5,000 of this figure represents new debt owed Wunder, Ryan, Cannon & Thelan for legal services.

December 30 totaled \$2,683,258, which, when combined with the carry-over from July, brought the debt total for the latter part of 1988 to \$3,557,383. Reported payments from August through December came to \$2,586,564, for a payment rate of 73%.

By the end of 1988, NSPAC's total reported debts owed all vendors stood at \$1,019,028. The respondent vendors' respective shares were:

American Telephone Marketing Group-	\$167,761.75
Response Dynamics	- 501,641.86
The Best Lists	- 120,689.69
Mid-America Printing	- 4,521.10
American Graphic Design	- 3,766.65
Fulfillment Management Service	- 129,927.45
Direct Response Data Management	- <u>58,806.91</u>
Total	- \$987,115.41

Debts owed non-respondent vendors at the end of that year totaled \$31,914.

During 1989 NSPAC reported new debts totaling \$435,876 owed the respondent vendors, bringing total debts owed these vendors that year to \$1,422,991. Payments to these creditors totaled \$212,384.04, for a payment rate of 14.9%. By the end of the year NSPAC owed \$1,211,512 to these seven vendors. In that same year new debts owed by NSPAC to vendors other than the seven totaled \$127,907, which, when combined with debts carried over from 1988, brought total indebtedness that year to \$160,021. Payments to these non-respondent vendors came to \$146,970 for a payment rate of 91.8%, and left only about \$12,650 owed to five non-respondent vendors as of December 31.

In 1990 debts owed the respondent vendors continued to rise. New debts due these vendors that year totaled \$183,646. When

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combined with those carried over from 1989, debts owed during 1990 totaled \$1,395,158. Payments totaled only \$145,734, for a payment rate of 10.4% and left \$1,249,774 owing at the end of the year. During the same year reported new debts owed non-respondent vendors totaled \$46,251.68. Combined with those carried over, such debts in 1990 totaled \$58,901. Payments to these same vendors totaled \$37,087.50, for a payment rate of 63% and left \$26,680 owed at the end of the year.

In 1991 new debts owed the seven vendors totaled \$89,786.32, of which \$61,890.52 was incurred in February. Carry-over plus new debt equaled \$1,339,560. Payments to these vendors in 1991 totaled \$70,622.44, for a payment rate of 5%. Debt owed the remaining three non-respondent vendors increased by \$4,552.28 in 1991, on top of the \$26,680 from 1990, for a total of \$31,232. Payments to the same vendors totaled \$7,307.69, resulting in a payment rate of 23% and leaving total debt of \$23,924.

By the end of June, 1991, debts owed the respondent vendors had reached \$1,268,939.19 where they have remained. This total is divided as follows:

American Telephone Marketing Group	-	\$ 340,562.40
Response Dynamics	-	413,702.78
The Best Lists	-	116,072.15
Mid-America Printing	-	54,252.25
American Graphic Design	-	12,957.03
Fulfillment Management Service	-	248,071.62
Direct Response Data Management	-	<u>83,321.55</u>
Total	-	\$1,268,939.19

As of December 31, 1993 total debts owed by NSPAC stood at \$1,294,152.97, including the above-cited \$1,268,939.19 owed the

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respondent vendors, plus \$1,029.37 owed Washington Intelligence Bureau for "mail processing and caging," \$1,103.82 owed Saturn Corporation for "computer services," and \$23,080 owed Wunder, Ryan, Cannon & Thelan for "legal fees."

c. Vendors' Responses to Complaint

In their response to the complaint in MUR 3638, the respondent vendors cite the Commission's present regulations at 11 C.F.R. § 116.3(b) and (c), and argue that "the business relationship between the Companies and NSPAC met each of the standards set forth in the Commission's regulations." They state:

The Companies followed their established procedures and practices in determining to go forward with their business arrangements with NSPAC. In past dealings with principals of NSPAC, they had received prompt payment in full. The underlying agreement between the parties conformed to usual and normal practice in the industry. The contract was a pre-printed standard form agreement regularly used by the Companies. . . . The contract is substantially identical to contracts executed by all of the company's clients. Pursuant to the contract, NSPAC agreed to be billed at the Companies' standard rates. . . . The contract also called for NSPAC to pay according to the Companies standard terms of payment.

It is further asserted that the Companies "received prompt payment from NSPAC on its invoices through October 1988" and that "the relationship between the Companies and NSPAC was an arm's-length commercial transaction that was a financial success for these Companies in spite of the currently outstanding debt."

In response to the allegation in the complaint that the amount of debt owed the seven vendors is "disproportionate to the size of the vendors and to the political committees involved", respondents assert that NSPAC had receipts and expenditures of

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more than \$10.27 million. "NSPAC's total unpaid debt to the Companies is approximately \$1.3 million, or less than 15% of gross income for the total project. NSPAC's debt to total income ratio for this project is better than the Companies' average client debt to total income ratio."

Citing MUR 216/239 (1976), it is argued that courts "will not intervene in business decisions motivated by a rational purpose and made in good faith."

Surely no business purpose is more rational than the Companies' purpose in entering into a contractual relationship with NSPAC: the realization of profit. This relationship required the Companies to take the risk that they would be forced to write off a large debt if NSPAC became insolvent. The Companies were willing to take that risk in return for the possibility that they would realize significant profits from the contract. That the Companies' position was reasonable is borne out by the profits they ultimately did realize, profits that dramatically outweigh the loss resulting from the Companies' failure to collect the NSPAC debt. . . . The Complainant has made no showing that the Companies acted with any motive other than a desire to earn a profit. The Companies have earned more net income from work performed on this one NSPAC account than any other account they have handled within the same time frame.

Finally, as to income generated from this contract, it is argued that as a result of the Companies co-ownership of the mailing lists created pursuant to the agreement with NSPAC, they have continued to earn "significant net dollars" and expect to do so "over the next four years." "List rental income earned from the Americans for Bush mailing list of 128,000 names and new

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accounts produced as a result of publicity over this project has more than offset all \$1.3 million owed to the Companies."

With regard to attempts to collect on the debts owed, the vendors argue that the Commission's regulations require the filing of suit against debtors only if it is commercially reasonable to do so. "Presumably, commercial reasonableness does not require a business to expend a substantial sum of money in pursuit of a debt that may not be possible to collect. . . . Because NSPAC is insolvent, any attempt by the Companies to collect the debt owed to them would likely be fruitless."

The respondent companies also state:

Direct mail debts and the Companies' fees are generally paid from money raised through programs conducted by them on behalf of their client. The Companies vigorously pursue fundraising programs to enable their clients to pay all bills. When fundraising projects consistently lose money, the Companies may determine that it is not possible to net any additional money to pay bills and therefore they may decide to cease new work for a client rather than continue to lose money on additional mailings. If NSPAC could raise the funds to pay their debts, the Companies would certainly seek action by NSPAC. It is clear from the Companies' experience and expertise that such a fundraising effort would fail and further increase NSPAC's debt to the Companies.

According to the virtually identical affidavits submitted by Mr. Kunko and Mr. Kanfer, NSPAC paid the vendors consistently until November, 1988. They state:

In October a business decision was made to mail approximately 3 million letters on previously tested lists. The projection indicated that the mailing would net more than \$700,000. The actual results of the mailings were a loss of about \$400,000. The difference between the projected gain and the actual loss on this mailing was over

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1 million dollars and nearly accounts for the entire debt that NSPAC has with RDI and related companies.

The affidavits also restate the vendors' assertions that the Companies earned more income from NSPAC's Americans for Bush program than from any other account within the same time frame and that the mailing list derived from that program "continues to earn significant net dollars for the Companies and is expected to continue earning income over the next four years."

3. RCC/Vendor Relationships

a. Terms of Contract

On November 7, 1989, prior to its registration with the Commission on December 5 of that year, the RCC entered into a two-year contract with Response Dynamics, Inc. for fundraising services. The contract appears to have been based on the same standard form as the NSPAC contract; however, the RCC negotiated the deletion of the apparently otherwise standard provisions regarding the receipt by Response Dynamics of any list rental commissions, co-ownership of any lists generated, and unlimited use of such lists by the vendor. Otherwise, compensation of the vendor was to be upon the same bases as those in the NSPAC contract, namely \$50.00 per one thousand fundraising packages processed, 25% of telephone solicitation costs, and \$2.00 per name for individually typed mailings to high dollar (\$50 or above) donors.

As in the NSPAC contract, Response Dynamics was to render periodic billings to the RCC, which were to be paid by the due date on the invoice. Unlike the NSPAC contract, however, there

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was no provision for access to list rental income as an alternative source of payment. The agreement did include the provision in the NSPAC contract that, in the event of invoices being overdue by ninety or more days, RDI could direct all future returns to an escrow account to which it would have access.

The amount of \$25,000 in liquidated damages for early termination appeared in the RCC contract, as did the provision that upon termination all property and material would become that of the company until all payments were made by the committee. The company was to have sole ownership of all copy, layouts and artwork.

**b. Execution - Debts Incurred and Payments Made**

Between January 1, 1990 and June 30, 1992 the pattern of debts incurred by the RCC, payments made and net debt outstanding as regards the seven vendor respondents in comparison with other vendors was as follows:

Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
1/1-31/90				\$1,000	\$ -0-	\$ 1,000
2/1-28/90	\$18,606	-0-	\$18,606	4,073	-0-	5,073
3/1-31/90	4,903	16,098	6,930	1,707	1,135	5,646
4/1-30/90	48,797	3,984	51,743	7,100	2,938	9,808
5/1-31/90	23,324	12,912	62,156	9,963	2,200	17,571
6/1-30/90	4,859	15,468	51,546	1,941	2,783	16,729
7/1-31/90	71,695	9,612	113,629	6,403	6,802	16,330
8/1-31/90	67,542	57,756	123,415	800	8,342	8,788
9/1-30/90	27,479	48,287	102,606	5,833	988	13,634
10/1-17/90	14,683	14,414	102,875	268	-0-	13,902
11/26/90	1,632	26,673	77,834	1,240	3,974	8,918
11/27-						
12/31/90	27,603	12,755	92,682	2,608	1,317	10,209
1/1-31/91	15,929	18,214	90,397	1,859	2,500	9,569
2/1-28/91	18,312	21,655	87,054	953	-0-	10,523
3/1-31/91	9,297	10,274	86,077	1,101	1,552	10,072
4/1-30/91	5,724	10,314	81,487	289	101	10,260
5/1-31/91	3,718	-0-	85,206	1,130	724	10,666
6/1-30/91	9,575	6,266	88,516	325	2,054	8,937

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Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
7/1-31/91	13,626	16,105	84,327	3,901	-0-	12,839
8/1-31/91	12,434	8,504	89,966	792	-0-	13,631
9/1-30/91	8,523	9,189	89,300	631	3,684	10,578
10/1-31/91	3,292	1,215	91,377	585	280	10,883
11/1-30/91	85	-0-	91,463	211	-0-	11,095
12/1-31/91	485	-0-	91,949	636	-0-	11,731
1/1-31/92	1,058	-0-	93,000	1,715 <sup>6</sup>	-0-	13,446
2/1-29/92	824	-0-	93,824	136	-0-	13,582
3/1-31/92	1,385	-0-	94,209	48	300	13,330
4/1-30/92	-0-	-0-	94,209	-0-	-0-	13,330
5/1-31/92	818	-0-	95,027	108	-0-	13,438
6/1-30/92	-0-	-0-	95,027	-0-	364	13,074

During 1990 the RCC reported new debts owed the seven vendor respondents totaling \$311,123. Payments that year totaled \$217,959 for a payment rate of 70%. At the end of the year \$92,682 was owed these seven vendors. In the same year new debts owed for services rendered by non-respondent vendors totaled \$42,936 and payments totaled \$30,479, for payment rate of 71%.

New debt accumulated in 1991 as owed to the respondent vendors totaled \$101,000; when added to the amount carried over from 1990 debts totaled \$193,682. Payments totaled \$101,736 for a payment rate of 53%. New debt owed non-respondent vendors that year came to \$12,413. A total of \$10,209 in debts owed these latter vendors had been carried over from 1990, bringing total debt in 1991 to \$22,622. Payments equaled \$10,895, for a payment rate of 48%.

At the end of the contract period in October, 1991, the RCC's total debts owed all vendors stood at \$102,260. Of this figure \$91,377 was owed the respondent vendors. This included:

6. This amount was owed Miller/Roos.

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American Telephone Marketing Group	-	\$20,955.00
Response Dynamics	-	16,648.10
The Best Lists	-	2,455.62
Mid-America Printing	-	8,785.18
American Graphics Design	-	4,797.00
Fulfillment Management	-	18,224.37
Direct Response Data	-	<u>19,512.68</u>
		\$91,377.95

By June, 1992 the amount owed these seven vendors had risen to \$95,027, or by only \$3,890, a figure which would appear to indicate that no significant new projects were undertaken after October, 1991. Their respective shares were:

American Telephone Marketing Group	-	\$20,955.00
Response Dynamics	-	16,694.35
The Best Lists	-	3,219.62
Mid-America Printing	-	8,785.18
American Graphic Design	-	4,797.00
Fulfillment Management Service	-	18,298.87
Direct Response Data Management	-	<u>22,277.75</u>
Total	-	\$95,027.77

The amounts owed other vendors totaled \$13,075.33. No payments were made to any of these vendors in 1992 or 1993; thus, as of November, 1993, all of the debts remained unchanged.

c. Vendors' Responses to Complaint

The vendors have stated that the agreement between the Companies and the RCC was a "standard pre-printed agreement" and that the fee charged was the "standard rate of \$50.000 pr thousand packages mailed." They go on to assert:

After about a year of standard direct mail prospect package testing and remailings to active donors of RCC, the Companies determined that the project did not have the potential that the Companies originally hoped. Based on the results of all work performed by the Companies for RCC, the Companies made a business decision to temporarily reduce the level of mail volume until the political fundraising climate improved.



The fact that the RCC insisted upon eliminating certain portions of the standard Response Dynamics contract regarding list rental income and list co-ownership by that vendor is not addressed by the vendors. Nor do they explain what appear to have been extensions of credit well beyond a year.

C. ANALYSIS

As outlined above, the Commission's revised regulations governing extensions of credit became effective as of June 27, 1990, thus changing somewhat for the post-June, 1990 period the factors to be considered by the Commission in determining whether or not a credit extension to a political committee results in a corporate or excessive contribution. Guidance as to standards is also to be found in advisory opinions which were issued both before and after June 27, 1990, as well as in matters under review on the public record as of that date and later.

1. Pre-June 27, 1990

a. Standards to be applied

The Commission regulations in force until mid-June, 1990 required anyone extending credit to a political committee to do so for no greater length of time than was normal business or trade practice, unless that person had made commercially reasonable attempts to collect. Otherwise, a contribution would result. (Former 11 C.F.R. § 100.7(a)(4)). These earlier regulations governing corporate activity also required that commercial vendors extend credit only in the ordinary course of business and on terms similar to those extended non-political clients. (Former C.F.R. § 114.10.) Pre-June, 1990 advisory opinions which addressed

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extensions of credit for direct-mail fundraising and telephone solicitations determined that so long as such extensions for start-up costs were normal industry practice and ordinarily extended by the particular vendor involved, they would not be considered contributions. However, by late 1989 the Commission was also emphasizing that agreements between vendors and political committees should have built-in safeguards of the vendors' financial interests. (AO 1989-21). This concern was restated in AO 1990-1 issued on March 1, 1990.

**b. Application to NSPAC and Companies**

As stated above, in 1986 NSPAC entered into written agreements with American Telephone Marketing Group, Washington Intelligence Bureau, and Response Dynamics for telephone and direct mail fundraising services. The three agreements provided for payment upon receipt of invoices. The funds for such payments were to come from an "Escrow Fund" into which proceeds from the fundraising activities would be placed. None of these agreements provided for advance payments by the committee. The agreement with Response Dynamics also granted that vendor the right of co-ownership of any list created pursuant to the agreement and the right to use that list without charge.

**i. The Contracts**

The NSPAC agreement with Response Dynamics appears to have been the vendor's standard form contract. The vendors state that this agreement was "substantially identical to contracts executed by all of the company's clients" and that payment was to be "according to the Companies standard terms of payment." More

specifically, the Response Dynamics agreement provided that this vendor was to submit bills "from time to time" which were to be paid "no later than on the due date stated therein." If invoices remained unpaid for more than thirty days past the due date, Response Dynamics was authorized to use the Committee's list rental income to pay outstanding invoices from itself and The Best Lists. The agreement did not contain provisions for the timing of payments to other vendors to be selected by Response Dynamics, nor for alternative sources of such payments.

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The second and third written agreements supplied by the respondents, both dated April 28, 1986, appear to have been individually prepared. The letter of agreement with American Telephone Marketing did not provide for the submission of invoices on any specific schedule, but required payment no later than 30 days after the invoice date. Invoices were to be paid directly from the Escrow Fund. By comparison, the contract with the Washington Intelligence Bureau provided that the vendor was to "render billings . . . by the 10th day of each month for services rendered in the preceding month and payment shall be due no later than thirty days from the date of such billing." The amount of compensation to be paid the Bureau was to be fixed by means of another agreement.

The respondent vendors acknowledge that the contracts with NSPAC "required the Companies to take the risk that they would be forced to write off a large debt if NSPAC became insolvent." There was, to be sure, some protection built into the contract with Response Dynamics as follows:

1. The Escrowee was to disburse returns to suppliers before transferring funds to the committee.
2. The required payment by NSPAC of \$25,000 as liquidated damages if the agreement terminated before the expiration date.
3. The right to list rental income if invoices were outstanding for more than thirty days.
4. The right of the Agency to "direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency" if invoices due a creditor for services provided per the agreement were unpaid ninety days after the original invoice date. The Agency would have the right to choose the signatory on the account.
5. "Unlimited use" without payment of any list generated under the agreement.

NSPAC's agreement with Response Dynamics was open ended as to the quantity of services to be performed within the five year period of the contract. There was no specification of how many direct mail programs were to be undertaken or what the size of those programs would be.

ii. Execution

In their response in MUR 2638 dated July, 1988, the vendors asserted that NSPAC was then current on its invoices and that no debt was older than ninety days.

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iii. Vendor Safeguards

Another issue is whether the safeguards built into the contract, even if adequate at the beginning of the contract period, remained sufficient to protect the interests of the vendors. By mid-1989, if not earlier, such protections of Response Dynamic and American Telephone Marketing as were built into their contracts with NSPAC, and any protection of, at least, The Best Lists through the Response Dynamics contract, had become grossly inadequate to cover the debts which had grown throughout the life of the contracts. These protections did not begin to cover these creditors with regard to any additional services rendered after March, 1989 or so. The only actual amendment of the Response Dynamics contract as debts mounted involved a lowering of mailing list charges from \$50.00 to \$35.00 per thousand, not additions to vendor safeguards. Nor is there any evidence on the record to indicate that Mid-America Printing, Fulfillment Management, Direct Response Data and American Graphic Design were shielded at all and at any time from bearing fully the financial risks involved in their shares of the NSPAC programs. In summary, it is evident that the respondent vendors assumed all of the risk of any and all additional extensions of credit at the least after early 1989.

Further, it does not appear that the later extensions of credit in 1989 and early 1990 were aimed solely at reducing the

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debts owed creditors. In 1989 NSPAC made \$12,150 in direct contributions to candidates. These contributions were made in February (\$500), May (\$2,000), June (\$1,000), July (\$1,000), September (\$3,750), October (\$1,800) and November (\$2,100).

In addition, beginning in May, 1989, the funds which were raised by NSPAC and not given out as contributions were used to pay down debts owned non-respondent vendors to a greater extent than they were used against the debts owed the respondent vendors. As can be seen on the chart on page 9, in May of that year no payments were made to any of the respondent vendors even though debts owed these companies totaled more than \$1,000,000, while over \$7,000 went to other companies to which a total of only about \$88,000 was owed. In June the seven companies received a total of \$2,820, while \$32,817 went to others. In August no payments were made to the seven companies while \$9,000 went to other non-respondent vendors. This pattern continued through the rest of 1989 and the first half of 1990.

Beginning in 1989 the year-by-year payment rates also show this favoritism toward the non-respondent vendors. In 1989 the respondent vendors were paid at a rate of 14.9% versus 91.8% for non-respondents. For the whole of 1990 the rate for respondent vendors was 10.4% while that for non-respondent vendors was 63%; the rates for the period of January-June, 1990 were 8% and 60% respectively. Thus, it appears that both Response Dynamics and NSPAC, as the authorizers of expenditures, favored vendors not related to the former when reducing debts, indicating that Response Dynamics and its affiliated companies were willing to

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carry the committee with regard to debts already owed by not claiming equitable portions of committee receipts as their due, in addition to permitting additions to those debts as described above.

The vendors argue that their use of the mailing list generated by the NSPAC program has more than made up for NSPAC's failure to pay vendor charges in full. The contract provision permitting this use did not, however, link such use and profits derived therefrom to payments due on the contract itself. The right to list use was stated in absolute form and therefore represented a form of compensation over and above payments on invoices for services rendered. Thus, the right to list use did not constitute protection for the vendors against the committee's failure to make full payments of invoiced charges.

The extensions of credit made by the respondent vendors to NSPAC between April, 1989 and June, 1990 did not meet the Commission's requirements, and thus resulted in violations of 2 U.S.C. § 441b by these vendors, including Response Dynamics, Inc. in its own right, Response Dynamics, Inc. doing business as American Graphic Design, and Response Dynamics, Inc. as the surviving entity after merger with American Telephone Marketing Group, Inc.

c. Application to RCC and Companies

i. NSPAC Contract Experience

Knowledge derived from prior dealings with a customer was not listed specifically in the regulations as a component of "ordinary course of business" until the revision of those regulations in

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June, 1990. Nevertheless, prior to that date such knowledge would have been relevant to a vendor's decisions regarding whether or not to extend credit.

The RCC registered as a political committee with the Commission on December 5, 1989. The complainant in MUR 3638 asserts that certain individuals on the board of directors of the RCC in large part were the same as those on the NSPAC board of directors. The chairman of the RCC, Floyd G. Brown, was active as a consultant with NSPAC in 1988. The principal vendors selected to serve the RCC beginning in 1990 were the same as those against which high levels of debt had been accumulated by NSPAC during the period immediately preceding the RCC contract. Thus, as to the RCC activity between December, 1989 and June 27, 1990, it is appropriate to examine whether the solicitation failures of the earlier organization in late 1988 and 1989 should have served as warnings to the respondent vendors with regard to their dealings with the RCC and, more fundamentally, to compare the provisions of the contracts entered into by the two committees.

The principal activities undertaken by NSPAC after its creation in 1986 were its independent expenditure program on behalf of the presidential campaign of George Bush in 1988, plus, to a lesser extent, programs in support of at least seven candidates for the U.S. Senate in the same 1987-88 cycle; its fundraising expenditures in 1989 and 1990 were for the most part reported as being on behalf of the 1988 Bush campaign. The RCC, on the other hand, was created to assist the senatorial campaigns of Republican candidates in 1990. The \$4,000 which the RCC

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contributed went to 1990 U.S. Senate candidates, not to the Bush campaign or to other 1988 candidates.

Thus, there were differences in the candidates in support of whom NSPAC and the RCC solicited contributions, with possible implications for RCC optimism in early 1990 despite NSPAC's then recent failures. Nevertheless, given the apparent overlaps in leadership between NSPAC and the RCC, consideration as to the creditworthiness of the RCC should have included the fundraising difficulties which NSPAC, under that leadership, had begun to suffer in late 1988. These difficulties continued into 1989 and 1990, compounded by new, but unsuccessful, attempts to raise sufficient funds in January and February, September and December, 1989 and in January and February, 1990 to meet NSPAC debts. The RCC began its solicitations in January or February, 1990; at that time NSPAC was carrying over \$1,000,000 in debt owed to the seven vendors, as it had for the past year. Any creditor still involved with NSPAC would have had ample reason to question whether its "ordinary" course of business should include granting credit to the new RCC.

ii. The Contract

The written agreement between Response Dynamics and the RCC designated the former as the committee's agent in its relationship with other vendors. As with the NSPAC contract, it is not clear whether separate agreements were negotiated with other respondent vendors, even though all had come into existence by November, 1989. The RCC agreement provided for payment of vendors upon submission of invoices, with payment to come from an Escrow Fund

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consisting of funds received in response to solicitations. No advance payments to vendors were required. Suppliers had first call upon monies received, although, again as with the NSPAC contract, it is not clear whether this applied to all vendors or just the seven respondents. Further, if invoices were unpaid for longer than ninety days, Response Dynamics could direct all future receipts into an Escrow Account which it would designate and against which its representative could make disbursements.

These RCC contract provisions appear to have been ones contained in Response Dynamics' standard contract and to have been designed to accord the vendors some measure of financial protection. On the other hand, this contract was not nearly as advantageous to the vendors as the one signed with NSPAC in that, as stated above, RCC negotiated the deletion of a number of provisions which would have given Response Dynamics rights to income from list rentals as well as to co-ownership and use of any list developed as a result of the contract. It also negotiated out the standard cost of living increase provision.

There is no evidence in hand indicating that it was ordinary business practice for Response Dynamics to agree to such significant changes in its standard contract. The vendors have, in fact, asserted that such provisions in the NSPAC contract with Response Dynamics, especially the one permitting unlimited use by that vendor of the list generated by the NSPAC program, have more than made up for the shortfall in payments by NSPAC on that earlier contract. Thus, with regard to the contract between the RCC and Response Dynamics and its pre-June 20, 1990

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implementation, the principal question is whether the compensation provisions of the contract as negotiated were in fact in the ordinary course of the vendor's business.

2. Post-June 27, 1990

a. Standards to be Applied

The Commission's revised regulations with regard to both corporate and non-corporate commercial vendors require that credit be extended only in the ordinary course of the creditor's business on terms "substantially similar" to those of extensions to non-political debtors. 11 C.F.R. § 116.3(a) and (b). Creditors must make "commercially reasonable" attempts to collect. 11 C.F.R. § 100.7(a)(4). "Ordinary course of business" is expressly defined to include the vendor's own procedures and past practice, prior experience with the particular debtor, and normal industry practice. 11 C.F.R. § 116.3(c).

Advisory opinions concerning fundraising contracts issued by the Commission after June, 1990 and before the end of NSPAC activity in mid-1991 placed even more emphasis than earlier ones upon the importance of advance payments to vendors and upon assurances that the vendors would not be left bearing most of the risk of a fundraising project. (See AO 1990-14 and AO 1990-19).

b. Application to NSPAC and Companies

The post-June 27, 1990 extensions of credit to NSPAC by the respondent vendors took place under the original contracts signed in 1986 and amended slightly in early 1989. By June, 1990 it was clear that the debts owed by NSPAC to the seven vendors had not only not been reduced, but had grown steadily since October, 1988.

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Yet these vendors continued to extend credit. Of special interest is the new debt totaling \$61,890 reported for February, 1991.

The vendors and NSPAC appear to have ignored at least two of the elements of the definition of "ordinary course of business" found in the new regulations, namely whether the vendor had received prompt and full payment in the past from the same committee and whether the credit extension "conformed to the usual and normal practice of in the commercial vendor's trade or industry." 11 C.F.R. § 116.3(c)(3). Past practice with NSPAC should by June, 1989 have alerted the vendors to the probability that advances would not be recouped. Further, it seems highly unlikely that further extension of credit under these circumstances would have complied with "usual and normal" industry practice when a client is so deeply in debt. Regarding the Commission's warning against such vendors assuming most of the risk of fundraising, it appears that the respondent vendors took on all of the risk attendant to post-June, 1990 fundraising for NSPAC.

Between July and September, 1990, NSPAC and Response Dynamics appear to have continued to favor smaller vendors over the respondent vendors when it came to dispensing receipts. As of June 30 debts owed the seven vendors totaled \$1,235,383. New debts accumulated in July, August and September totaled \$23,570, bringing total debts owed during that period to \$1,258,953. Payments during this three month period totaled \$31,684 for a payment rate of 2.5%. By contrast, debts owed other vendors as of June 30 totaled \$20,464. Debts incurred over the next three

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months totaled \$12,425, bringing the total to \$32,889. Payments to non-respondent vendors during this period totaled \$11,098, for a payment rate of 34%. Beginning in October somewhat more emphasis was placed upon directing receipts toward lowering the debt owed the seven.

With regard to the entire contract period, the vendors stress the profitability of their clients' dealings with NSPAC. They assert that the "debt to total income ratio" for the NSPAC "project" was "better than the Companies' average client debt to total income ratio."

As stated above, the Commission in Advisory Opinion 1991-32 emphasized that losses suffered by a vendor "would raise a rebuttable presumption that the company is not charging the usual and normal charge . . . ." The reverse, however, is not necessarily true; i.e., profit is not always sufficient proof that services have been provided "in the ordinary course of business."

c. Application to RCC and Companies

As can be seen on the monthly summary of RCC debt above, the amount of new debt owed the seven vendors by the RCC jumped several fold in July and August, 1990, with net debt owed more than doubling by the end of July from \$51,546 to \$113,629. It appears that a new, larger round of solicitations took place at that time, presumably in order to collect funds to pay the vendors.

As of mid-1990 no contributions to candidates had been made by the RCC. Nor does it appear that non-respondent vendors were being favored in terms of payments. Thus, the issue is whether it

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was in the ordinary course of the vendors' own business to extend more credit in order to recoup earlier losses, whether such extensions are normal in the direct mail and telemarketing industries, and whether the vendors' earlier experience with the RCC should have signaled more caution. Given the information presently available, it appears that the prior experience of the respondent vendors under the RCC contract should have been enough to render highly questionable further extensions of credit after June, 1990.

**D. DETERMINATIONS**

In light of the above evidence of special treatment accorded NSPAC and the RCC by the respondent vendors, there is reason to believe that: Response Dynamics, Inc. in its own right, Response Dynamics, Inc. doing business as American Graphic Design, and Response Dynamics as the surviving entity after merger with American Telephone Marketing Group, Inc.; Direct Response Data Management Service, Inc.; The Best Lists, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc. violated 2 U.S.C. § 441b(a).

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OCTOBER 3, 1994

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Washington, DC 20005

RE: MUR 3638  
National Security Political  
Action Committee  
Elizabeth I. Fediay, as  
treasurer

Dear Mr. Sullivan:

On October 8, 1992, the Federal Election Commission notified your clients, the National Security Political Action Committee and Elizabeth I. Fediay, 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 enclosed with that notification.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on September 27, 1994, found that there is reason to believe the Committee and Ms. Fediay, as treasurer, violated 2 U.S.C. §§ 441b(a), 433(b)(2), 441a(f), and 434(c) provisions of the Act. 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 Subpoena to Produce Documents and Order to Submit Written Answers 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 subpoena and order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If your clients 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

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MUR 3638

Paul E. Sullivan, Esquire

Page 2

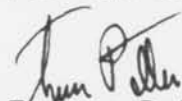
declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable 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 Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

For the Commission,



Trevor Potter  
Chairman

Enclosures

Subpoena and Order

Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
)  
)

MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: National Security Political Action Committee  
c/o Paul E. Sullivan, Esquire  
1225 I Street, NW  
Washington, DC 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 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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MUR 3638  
National Security Political Action Committee  
Page 2

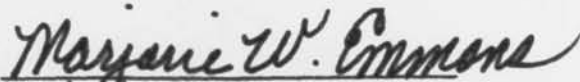
WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 31<sup>st</sup>,  
day of October, 1994.

For the Commission,



Trevor Potter  
Chairman

ATTEST:



Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories  
Document Request

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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.

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.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

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"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc.

"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.

"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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INTERROGATORIES

1. Produce all documents related to the negotiation of the contract signed by the National Security Political Action Committee ("NSPAC") with Response Dynamics, Inc. on April 7, 1986.
2. Produce all documents related to the negotiation of the letter of agreement signed by NSPAC with the American Telephone Marketing Group, Inc. ("ATMG") on April 28, 1986.
3. Identify the individuals who represented Response Dynamics in the 1986 negotiations with NSPAC.
4. Identify the individuals who represented ATMG in the 1986 negotiations with NSPAC.
5. Identify the individuals who represented NSPAC in the 1986 negotiations with Response Dynamics.
6. Identify the individuals who represented NSPAC in the 1986 negotiations with ATMG.
7. Identify the individuals at each of the Companies who had primary responsibility for performance of the Response Dynamics contract and the ATMG letter of agreement with NSPAC dated April 7 and April 28, 1986 respectively.
8. State whether Response Dynamics, "as the Agency," served as the principal contractor for the contract with NSPAC dated April 7, 1986.
9. State whether the letter of agreement with ATMG signed on April 28, 1986 covered work to be performed pursuant to NSPAC's contract with Response Dynamics dated April 7, 1986. If no, describe the project(s) anticipated by the letter of agreement.
10. Produce all contracts or letters of agreement entered into by NSPAC directly with each of the Companies besides Response Dynamics and ATMG during the Companies' performance of NSPAC's contract with Response Dynamics dated April 7, 1976.
11. Produce all written agreements entered into by Response Dynamics on behalf of NSPAC with the other six Companies.

MUR 3638

National Security Political Action Committee

page 6

13. For the period between October 1, 1988 and December 31, 1991, produce all documents related to decisions made by NSPAC and the Companies to undertake new direct mail or telephone solicitations pursuant to the contract with Response Dynamics and the letter of agreement with ATMG dated April 7, 1986 and April 28, 1986 respectively.

14. Identify the individuals who represented each of the Companies in discussions and/or negotiations with NSPAC concerning the direct mail and telemarketing projects carried out for NSPAC by the Companies between October, 1988 and December 31, 1991, pursuant to the contract with Response Dynamics and the letter of agreement with ATMG dated April 7 and April 28, 1986 respectively.

15. Identify the individuals who represented NSPAC in discussions and/or negotiations with the Companies concerning the direct mail and telemarketing projects carried out by the Companies between October, 1988 and December 31, 1991 pursuant to the contract with Response Dynamics and the letter of agreement with NSPAC and ATMG dated April 7 and April 28, 1986 respectively.

16. Provide a listing of all direct mail and telemarketing projects carried out by the Companies for NSPAC between October 1, 1988 and December 31, 1991, together with the dates and costs of each project.

17. Produce copies of all direct mail solicitations produced and mailed pursuant to NSPAC's contract with Response Dynamics dated April 7, 1986.

18. Produce copies of all telemarketing scripts used in performance of NSPAC's contract and letter of agreement with Response Dynamics and ATMG dated April 7, 1986 and December 31, 1991 respectively.

19. For the period between April 1, 1986 and December 31, 1991, produce all invoices sent by the seven Companies to NSPAC.

20. For the period between April 1, 1986 and December 31, 1991, produce all invoices sent by the Washington Intelligence Bureau to NSPAC.

21. Produce all documents related to procedures used for authorization by Response Dynamics and NSPAC of payments to vendors by the Washington Intelligence Bureau from the Escrow Fund established pursuant to Section 5(c) of the Response Dynamics contract with NSPAC dated April 7, 1986. If there were non-written procedures or practices, please describe in detail.

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23. Describe the policies and practices used by Response Dynamics and the Washington Intelligence Bureau to determine at any particular point in time which vendors were to receive payments for services rendered to NSPAC pursuant to the contract with Response Dynamics and the letter of agreement with ATMG dated April 6, 1986 and April 26, 1986 respectively.

24. Describe the role played by NSPAC in determinations at any particular point in time as to which vendors were to receive payments for services rendered NSPAC pursuant to the contract with Response Dynamics and the letter of agreement with ATMG dated April 6, 1986 and April 26, 1986 respectively.

25. State whether funds advanced by Response Dynamics for postage, telephone vendors and other fund raising services were always reimbursed before proceeds from fundraising activities were disbursed to NSPAC or to other vendors, pursuant to Section 5(f) of the contract with NSPAC dated April 7, 1986. If no, list and describe the instances in which such reimbursements were not made.

26. State how much of the debt presently owed Response Dynamics by NSPAC is comprised of unreimbursed advances.

27. State whether an Escrow Account was ever established by Response Dynamics, pursuant to Section 5(e) of the contract with NSPAC dated April 7, 1986.

28. State whether payments to vendors for services rendered to NSPAC pursuant to the contract with Response Dynamics dated November 7, 1989 were made directly to each vendor or through Response Dynamics.

29. Identify all individuals who took part in decisions leading to the establishment of NSPAC.

30. Provide copies of NSPAC's original constitution and bylaws and of any amendments thereto.

31. Provide copies of minutes of all meetings held in 1986 for purposes of establishing NSPAC.

32. Identify by year(s) of service all members of NSPAC's Board of Directors who have served between NSPAC's establishment and the date of this Order.

33. Identify by year(s) of service and office all officers of NSPAC who have served between NSPAC's establishment and the date of this Order

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MUR 3638

National Security Political Action Committee

Page 8

34. Identify by year(s) of service and position all employees of NSPAC who have served between NSPAC's establishment and the date of this Order.

35. Provide copies of all correspondence between NSPAC and the Republican Challengers Committee from September 1, 1989 to the date of this Subpoena.

36. Provide copies of all correspondence between NSPAC and the Presidential Victory Committee from September 1, 1991 to the date of this Subpoena.

37. List by date and amount any and all transfers of funds between NSPAC and the Republican Challengers Committee.

38. List by date and amount any and all transfers of funds between NSPAC and the Presidential Victory Committee.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: National Security Political  
Action Committee  
Elizabeth I. Pedyay, as treasurer

MUR: 3638

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by the Democratic National Committee on October 5, 1992. See 2 U.S.C. § 437g(a)(1).

II. SUMMARY OF ALLEGATIONS

The complaint in MUR 3638 alleges that the National Security Political Action Committee ("NSPAC") has been extended "commercially unreasonable" credit by seven vendor companies: Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc. According to the complaint and attached materials, these allegedly improper extensions of credit began in 1988 in connection with direct mail and telemarketing fundraising services performed for NSPAC by the companies. The complainant alleges that credit extended to NSPAC "has not been extended in the ordinary course of business and the terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." Further, the complaint alleges that "the Vendors have failed to make a commercially reasonable attempt to collect

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the debts from NSPAC." The complaint concludes that NSPAC has accepted illegal contributions from the vendors.

### III. FACTUAL AND LEGAL ANALYSIS

#### A. INTRODUCTION AND BACKGROUND

The principal issue addressed in this Analysis is whether NASPAC violated 2 U.S.C. § 441b by accepting in-kind contributions in the form of extensions of credit outside the ordinary course of business. The Analysis also addresses other issues involving affiliation, excessive contributions, and reporting problems.

##### 1. NSPAC

NSPAC filed a Statement of Organization with the Commission on April 24, 1986. Elizabeth I. Fediay was reported to be the secretary/treasurer and the committee's address as 3200 Morrison St., NW, Washington, DC. According to a portion of the Almanac of Federal PACs: 1990 attached to the complaint, NSPAC's advisory board included retired Admiral Thomas Moorer, retired Rear Admiral C.A. "Mack" Hill, and former United States Senator Jeremiah Denton.

According to sworn affidavits submitted in MUR 3069, Floyd G. Brown was one of the principal individuals involved with the NSPAC media program in 1988 in support of the candidacy of George Bush.<sup>1</sup> In MUR 3556 the complainant submitted a videotape allegedly distributed to potential contributors to the Presidential Victory

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1. Others included Elizabeth Fediay, Larry McCarthy, Craig Shirley, and Anthony Fabrizio.

Committee in 1992 in which Mr. Brown indicated that he had been the "political director" of NSPAC in 1988.

NSPAC's first report, the 1986 June Monthly, showed \$30,720.76 in contributions received, \$2,809.72 in operating expenditures for salary payments and postage, and a debt of \$43,3112.15 owed American Telephone Marketing Group. In June 1986 the committee incurred another \$3,628.37 in debts owed American Telephone Marketing Group, but also made \$26,467.50 in payments to this vendor. The committee began making payments to Response Dynamics in July, 1986, and incurred debts owed The Best Lists beginning in August of that year. Mid-America Printing became a creditor as of March, 1987, as did American Graphic Design in July, Fulfillment Management in August and Direct Response Data Management Service in September, 1987. One or more of these seven companies continued to provide services and/or to submit invoices to NSPAC until June, 1991, and debts owed by this committee to these vendors continued to accumulate. As of the end of June, 1991, remaining aggregated debts owed these seven corporations by NSPAC totaled \$1,268,939.19, while reported cash on hand came to \$78.79.

## 2. Republican Challengers Committee

The Republican Challengers Committee filed its Statement of Organization with the Commission on December 5, 1989. Its reported address was 1615 L Street, NW, Washington, DC, although the named custodian of records and treasurer was Robert E. Miller, Jr., 1200 Third Ave., San Diego, California. George Mason Bank in Fairfax, Virginia was listed as the committee's

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depository. On April 27, 1992, the RCC informed the Commission that its address had changed to 450 "A" Street, San Diego. As of the committee's 1993 November Monthly Report, Mr. Miller was still the treasurer.

According to an article published in the July 21, 1990 issue of the National Journal, which is attached to the complaint in MUR 3638, the RCC was "established" by Floyd Brown who has served as its chairman. In his sworn affidavit in MUR 3578 Mr. Brown has confirmed that he is the chairman of the RCC. The National Journal article also stated that "five members of the RCC board of directors are professional consultants and most [unnamed] were involved with NSPAC."

The RCC's third report of contributions and expenditures, the 1990 February Monthly Report, showed contributions received totaling \$1,495, \$253 in expenditures, and \$23,199.26 in debts owed, all but \$1,000 of the latter having been incurred during January. The reported creditors included:

Response Dynamics, Inc.	- \$13,229.15
Best Lists, Inc.	- 3,371.26
American Graphics Design	- 1,520.50
Direct Response Data Management	- 4.86

Mid-America Printing and Fulfillment Management were reported as additional creditors as of March and April, 1990. American Telephone Marketing Group became a creditor in July, 1990.

### 3. The Companies

According to information received by the Commission in the context of MUR 2638 and to the response submitted on behalf of all of the companies involved in the present matter, Response

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Dynamics, American Telephone Marketing Group, The Best Lists, Fulfillment Management Services, Direct Response Data Management, Mid-America Printing, and American Graphic Design were all founded, and are still owned, by David A. Kunko and Ronald Kanfer. Mr. Kunko is responsible for business and accounting functions, and Mr. Kanfer for creative matters.

Response Dynamics was incorporated in March, 1981 and The Best Lists in November of the same year. The year of American Telephone Marketing Group's incorporation was 1983; this corporation is no longer active, having merged with Response Dynamics in 1990 with Response Dynamics the surviving entity. Mid-America Printing's date of incorporation was December 29, 1986, while Fulfillment Management Service and Direct Response Data Management Service were both incorporated on June 19, 1987.

According to information provided in the context of MUR 2638, American Graphic Design is a division of Response Dynamics. For purposes of this Analysis, American Graphic Design will be treated as a separate entity. The same is true with regard to American Telephone Marketing Group.

The Companies together perform direct mail, telemarketing, mailing list brokerage, letter production, filing, printing and inserting services. An eighth entity, Washington Intelligence Bureau, which is assertedly not affiliated with the respondent companies, has served as the escrow agent for contributions received as a result of solicitations undertaken on behalf of the Companies' clients.



**B. EXTENSIONS OF CREDIT TO NSPAC**

**1. The Law**

The Act prohibits any corporation from making a contribution or expenditure in connection with any federal election, and any committee from accepting such a prohibited contribution. 2 U.S.C. § 441b(a).

Prior to June, 1990, the Commission's regulations included within the definition of "contribution" extensions of credit to political committees if the extensions were for a "period of time beyond normal business or trade practice unless the creditor . . . made a commercially reasonable attempt to collect the debt." Former 11 C.F.R. § 100.7(a)(4). Corporations were permitted to extend such credit if it were done in the corporation's ordinary course of business "and the terms [were] substantially similar to extensions made to non-political debtors which [were] of similar risk and size of obligation." Former 11 C.F.R. § 114.10.

These earlier regulations at Section 100.7 focused in large part upon the duration of extensions of credit. The Commission's revision of this section, which went into effect on June 27, 1990, went beyond the earlier emphasis upon timing to broader emphases upon the "ordinary course of business" and upon comparisons with treatment of non-political clients like those set out at former 11 C.F.R. § 114.10. Present 11 C.F.R. § 100.7(a)(4).

Further, the new regulations incorporated former Section 114.10 into a new 11 C.F.R. § 116.3. This new provision permits both unincorporated and incorporated commercial vendors to extend credit, provided that this is done "in the ordinary course of the

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corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." 11 C.F.R. § 116.3(a) and (b). This new section also spells out the following factors to be considered in the Commission's analysis of whether a vendor has extended credit in its "ordinary course of business": (1) whether the vendor followed its own established procedures and past practice; (2) whether the vendor had received prompt and full payment in the past from the same candidate or committee; and (3) "[w]hether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry." 11 C.F.R. § 116.3(c)

## 2. NSPAC/Vendor Relationships

### a. Terms of Contracts

NSPAC entered into contracts with two of the three then-existing vendor corporations in April, 1986.<sup>2</sup> First, on April 7, NSPAC signed a 5-year contract with Response Dynamics, as "the Agency," for carrying out a direct response fundraising program. The contract, which appears to have been the vendor's then standard, printed agreement, stated that: Response Dynamics would provide all layouts and copy for a NSPAC direct mail program; coordinate and develop the program; make arrangements with advertising media; and "negotiate and enter into agreements on behalf of the Client for any special material and talent required and for all photography, models, special effects,

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2. Based upon incorporation dates, the only three such corporations in operation in early 1986 were Response Dynamics, The Best Lists and American Telephone Marketing Group.

layouts, artwork, printing and any necessary technical material for use in the direct response fundraising and advertising program." Response Dynamics was given the authority to select all vendors of such materials and services.

The contract further provided that Response Dynamics was to be reimbursed for all advertising costs and expenditures and for "the costs of packaging, shipping, taxes and duties, and telephone calls and telegrams incurred in connection with the performance of the Agreement." The company's compensation was to be \$50 for each thousand fundraising packages processed for mailing, 25% of the costs of telephone solicitations, \$2.00 per name for individually typed mailings to donors of \$50 or more, and commissions of 20% of the standard list rental charges and/or exchanges made directly to organizations and of 40% of list rentals made to brokers or agencies. The Best Lists was designated as an agent of Response Dynamics for the last purpose. The contract also provided for a yearly cost of living increase.

All solicitation returns were to be sent to "an independent third party" (Washington Intelligence Bureau) which would tabulate all returns, deposit the contributions into an "Escrow Fund," and make disbursements to the "direct mail suppliers" for bills outstanding before funds were transferred to NSPAC.<sup>3</sup> The approvals of Response Dynamics and NSPAC were required for such disbursements. List rental receipts and commissions were to be

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3. Given the apparent non-existence in April, 1986 of four of the vendors later related to Response Dynamics, it is not clear from the language of the Response Dynamics/NSPAC agreement exactly what entities were covered by "direct mail suppliers."

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placed in a separate bank account for use in paying commissions and list rental fees.

The contract provided that Response Dynamics was to render periodic billings which were to be paid "no later than on the due date stated therein." If invoices from Response Dynamics or Best Lists were thirty days or more past due, Response Dynamics was authorized to have list rental income applied to those invoices. The agreement also contained the provision that "if invoices due a creditor(s) for services provided under this Agreement (including the Agency), remains [sic] unpaid ninety (90) or more days past the original invoice date, the Agency shall have the right to direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency for the purpose of tabulation, deposit and disbursement to the creditor(s)." Disbursements from the Escrow Account would be per the signature of an Agency representative. Further, the agreement stated that "any funds advanced by the Agency for postage, telephone vendors and other direct response fund raising services or materials shall be immediately reimbursed the Agency before any returns are disbursed to the [committee] and/or other parties."

In recognition of costs to be incurred by Response Dynamics in developing the program, NSPAC agreed to pay the company \$25,000 as liquidated damages for termination of the agreement prior to its expiration date. Upon termination of the agreement, all property and material produced by Response Dynamics was to be considered its property until final payment was made. NSPAC

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acknowledged the ownership by Response Dynamics of layouts, copy and artwork, and its co-ownership of any and all lists created pursuant to the agreement. Response Dynamics was to be entitled to unlimited use of such lists during and subsequent to the agreement, with no "payment of any nature whatsoever by the Agency to the Client."

On April 28, 1986, NSPAC entered into a separate letter of agreement with the American Telephone Marketing Group ("ATMG"), another of the seven vendor respondents, for telephone fundraising services, and into a three-party contract with the Washington Intelligence Bureau and ATMG for the provision of escrow services. The letter of agreement with ATMG provided that: the vendor would "perform the telemarketing services at the rate of \$37 per communicator hour; computer letters or mailgrams would be sent to all pledges at the option of ATMG for a cost of \$1.50 per message or \$3.00 per mailgram; "chase" letters could be sent to unproductive pledges at a cost of \$1.10 per letter; The Best Lists would serve as agent of both ATMG and NSPAC in acquiring calling lists, and a third party "Escrowee" would be employed to tabulate returns, deposit funds in an "Escrow Fund" and disburse returns to suppliers before transferring funds to NSPAC.

The three-party contract signed by NSPAC, ATMG, and the Washington Intelligence Bureau stated that: the Bureau would receive returns from the telephone fund raising program; NSPAC and ATMG would "mutually" present to the Bureau invoices of creditors,

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including their own, for payment by the Bureau; the Bureau would present bills for its services by the 10th of each month for which payment would be due within thirty days; and the Bureau could pay itself without authorization if such payment authorization had not been received by the due date. Compensation terms were to be fixed in a separate agreement.

No contracts or letters of agreement have been supplied with regard to the participation of Direct Response Data Management Service, The Best Lists, American Graphic Design, Mid-America Printing Company and Fulfillment Management Services in the NSPAC program. Based upon the Response Dynamics contract and NSPAC's reports, it appears that these companies dealt with NSPAC through Response Dynamics, issued their own invoices and were paid by means of separate checks; however, the terms of payment and other details are not presently available.

**b. Execution - Debts Incurred and Payments Made**

Based upon NSPAC reports, between August 1, 1988 and June, 1991 the patterns of new debt incurred, payments made and net debt outstanding as regards the seven vendor respondents and, separately, other vendors, were as follows:

<u>Month</u>	<u>New Debt Owed Seven</u>	<u>Payments To Seven</u>	<u>Net Debt Owed Seven</u>	<u>New Debt Owed Others</u>	<u>Payments To Others</u>	<u>Net Debt Owed Others</u>
8/1-31/88	\$950,830	\$429,533	\$1,445,421	\$172,124	\$151,421	\$293,557
9/1-30/88	940,328	860,981	1,524,798	219,569	235,621	349,505
10/1- 19/88	475,546	767,851	1,232,492	274,788	236,936	387,357

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Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
10/20-						
11/28/88	229,032	507,470	902,016 <sup>4</sup>	121,035	384,842	103,704
11/29-						
12/31/88	87,522 <sup>5</sup>	20,729	987,115	46,312	118,103	31,914
1/1-31/89	69,138	80,090	976,162	30,171	2,510	59,575
2/1-28/89	59,590	24,000	1,011,758	13,752	8,677	64,649
3/1-31/89	64,716	43,645	1,032,868	27,835	27,550	64,934
4/1-30/89	19,992	10,600	1,042,138	13,800	5,777	72,958
5/1-31/89	16,638	-0-	1,058,800	15,285	7,056	81,173
6/1-30/89	36,726	2,820	1,092,683	2,877	33,317	50,741
7/1-31/89	39,123	20,040	1,112,753	4,832	19,049	36,724
8/1-31/89	15,883	-0-	1,128,636	4,349	9,003	32,070
9/1-30/89	38,838	1,686	1,165,774	4,160	14,600	21,630 <sup>6</sup>
10/1-31/89	13,756	520	1,174,017	3,584	8,360	16,654 <sup>6</sup>
11/1-30/89	8,088	4,921	1,182,182	5,008	2,460	19,203
12/1-31/89	53,388	24,058	1,211,512	2,059	8,636	12,656
1/1-31/90	32,635	44,373	1,199,774	5,877	8,284	16,813
2/1-28/90	37,085	21,825	1,215,034	8,733	1,704	23,842
3/1-31/90	8,407	12,919	1,210,522	1,993	2,348	23,488
4/1-30/90	18,831	5,000	1,224,353	2,062	870	24,680
5/1-31/90	10,011	10,929	1,223,434	2,991	5,386	22,284
6/1-30/90	21,151	9,203	1,235,383	1,116 <sup>7</sup>	2,936	20,464
7/1-31/90	7,569	16,388	1,226,564	8,194 <sup>7</sup>	4,074	24,584
8/1-31/90	10,792	10,518	1,226,841	848	5,840	19,592
9/1-30/90	5,209	4,778	1,227,269	3,383	1,184	21,790
10/1-17/90	6,543	3,481	1,230,330	709	-0-	22,500
10/18-						
11/28/90	14,574	5,938	1,239,276	1,656	3,830	20,327

4. Due to discrepancies between figures in the Committee's 1988 pre-election reports for debts owed at the end of the October 1-19 period and those in its 1988 post-election report for outstanding balances at the beginning of the October 20 - November 28 period, this total is not consistent with that which would result using the \$1,232,016 amount at the end of the preceding period. The Committee's report covering the October 1-19 period was apparently never amended as to debts owed, making it impossible to account for the approximately \$50,000 difference. (\$1,232,492 + \$229,032 - \$507,470 = \$954,054).

5. Certain figures have been indicated in bold type for emphasis.

6. One debt of \$200 disappeared from the Committee's reports between September and October. No expenditure related to this debt was reported.

7. \$5,000 of this figure represents new debt owed Wunder, Ryan, Cannon & Thelan for legal services.

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Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
11/29-						
12/31/90	10,836	377	1,249,774	6,978	626	26,680
1/1-31/91	4,562	5,159	1,249,179	1,189	1,833	26,035
2/1-28/91	61,890	45,563	1,265,510	1,089	2,431	24,693
3/1-31/91	17,670	10,400	1,272,777	1,488	1,234	24,946
4/1-30/91	4,336	8,000	1,269,113	-0-	-0-	24,946
5/1-31/91	1,326	1,500	1,268,939	785	-0-	25,732
6/1-30/91	-0-	-0-	1,268,939	-0-	1,807	23,924

At the end of July, 1988, debt owed all seven vendors totaled \$874,125. Reported new debt incurred between August 1 and December 30 totaled \$2,683,258, which, when combined with the carry-over from July, brought the debt total for the latter part of 1988 to \$3,557,383. Reported payments from August through December came to \$2,586,564, for a payment rate of 73%.

By the end of 1988, NSPAC's total reported debts owed all vendors stood at \$1,019,028. The seven named vendors' respective shares were:

American Telephone Marketing Group-	\$167,761.75
Response Dynamics	- 501,641.86
The Best Lists	- 120,689.69
Mid-America Printing	- 4,521.10
American Graphic Design	- 3,766.65
Fulfillment Management Service	- 129,927.45
Direct Response Data Management	- 58,806.91

Total - \$987,115.41

Debts owed other vendors at the end of that year totaled \$31,914.

During 1989 NSPAC reported new debts totaling \$435,876 owed the seven vendors, bringing total debts owed these vendors that year to \$1,422,991. Payments to these creditors totaled \$212,384.04, for a payment rate of 14.9%. By the end of the year NSPAC owed \$1,211,512 to the seven vendors. In that same year new debts owed by NSPAC to vendors other than the seven totaled

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\$127,907, which, when combined with debts carried over from 1988, brought total indebtedness that year to \$160,021. Payments to these other vendors came to \$146,970 for a payment rate of 91.8%, and left only about \$12,650 owed to five non-respondent vendors as of December 31.

In 1990 debts owed the seven vendors continued to rise. New debts due these vendors that year totaled \$183,646. When combined with those carried over from 1989, debts owed during 1990 totaled \$1,395,158. Payments totaled only \$145,734, for a payment rate of 10.4% and left \$1,249,774 owing at the end of the year. During the same year reported new debts owed other vendors totaled \$46,251.68. Combined with those carried over, such debts in 1990 totaled \$58,901. Payments to these same vendors totaled \$37,087.50, for a payment rate of 63% and left \$26,680 owed at the end of the year.

In 1991 new debts owed the seven vendors totaled \$89,786.32, of which \$61,890.52 was incurred in February. Carry-over plus new debt equaled \$1,339,560. Payments to these vendors in 1991 totaled \$70,622.44, for a payment rate of 5%. Debt owed the other three remaining vendors increased by \$4,552.28 in 1991, on top of the \$26,680 from 1990, for a total of \$31,232. Payments to the same vendors totaled \$7,307.69, resulting in a payment rate of 23% and leaving total debt of \$23,924. Of the last amount \$21,791 was owed for legal fees.

By the end of June, 1991, debts owed the seven vendors had reached \$1,268,939.19 where they have remained. This total is divided as follows:

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American Telephone Marketing Group	- \$ 340,562.40
Response Dynamics	- 413,702.78
The Best Lists	- 116,072.15
Mid-America Printing	- 54,252.25
American Graphic Design	- 12,957.03
Fulfillment Management Service	- 248,071.62
Direct Response Data Management	- <u>83,321.55</u>

Total - \$1,268,939.19

As of December 31, 1993 total debts owed by NSPAC stood at \$1,294,152.97, including the above-cited \$1,268,939.19 owed the seven vendors, plus \$1,029.37 owed Washington Intelligence Bureau for "mail processing and caging," \$1,103.82 owed Saturn Corporation for "computer services," and \$23,080 owed Wunder, Ryan, Cannon & Thelan for "legal fees."

c. Response to Complaint

NSPAC argues that "[t]he contract executed by NSPAC with [Response Dynamics ("RDI")] was the standard contract, as presented by RDI, represented to be utilized for all of RDI's political clients." This response also states:

At no time preceding 1989, did NSPAC seek to negotiate any special provisions in the contract nor was any extraordinary provision made in the contract. . . .

In February of 1989, the sole amendment to that contract was agreed to between NSPAC and RDI . . . . That single amendment to the April, 1986 contract amended [paragraph]4(A) to reduce the mailing list charges from \$50.00 per thousand to \$35.00 per thousand.

NSPAC states that the purpose of this amendment was to permit that committee to generate more revenue through more mail for purpose of paying its debts. "Virtually all net proceeds NSPAC received from that point forward were for purposes of debt retirement not new contributions or projects."

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In its analysis NSPAC emphasizes that the contract between Response Dynamics and NSPAC was entered into before the promulgation in 1990 of the Commission's present regulations governing extensions of credit by corporations. It is argued that the regulations in effect in 1986 required that credit be extended "in the ordinary course of the corporation's business" and that "it was NSPAC's understanding that the contract that was being tendered to it for services by RDI was the contract used by RDI in the ordinary course of its business and therefore, no inordinate credit extension was provided to NSPAC."<sup>8</sup>

Regarding the accumulation of debt owed the vendors by NSPAC, the response states:

NSPAC's attempts subsequent to the 1988 election to continue fundraising for purposes of retiring the 1988 debt were a substantial cause for the debt incurred as represented by the present NSPAC FEC report. This on its face, demonstrates NSPAC's attempt to conduct ongoing fundraising efforts in an attempt to reduce or retire the debt. An analysis of those reports during the last quarter of 1988 and 1989 will demonstrate that these efforts concluded in a net loss to NSPAC. It was for that very reason that NSPAC has elected to cease all attempts at direct mail fundraising because it merely was adding to the outstanding debt rather than netting out funds which could be used to retire the debt.

NSPAC urges that the Commission "bifurcate" its analysis, looking first to the original extension of credit and then to NSPAC's attempts to retire the debt owed the respondent vendors. As stated above, it is argued that the original extension was "an

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8. Counsel refers to regulations "revised as of July 1, 1987." This is apparently a mis-typed reference to the Commission's 1977 regulations.

arm's length standard business fundraising contract." Regarding retirement of the debt, respondents argue that continuous efforts were made until "it was evident that it was a net loss proposition." The committee also states,

[F]or purposes of this Complaint, the present debt is not an issue, and should neither be addressed nor should it impact upon the Commission's determination for dismissing the allegations in the Complaint. Those determinations will be properly undertaken at such time that NSPAC seeks, if ever, a debt forgiveness or settlement agreement with RDI. Under the present regulations, the Commission is well aware that debt settlements or debt forgiveness must come before the Commission for its approval.

The response concludes by asking that the Commission find that "no improper extension of credit was made by RDI to NSPAC and therefore, no violations of the Act occurred."

d. Analysis

As outlined above, the Commission's revised regulations governing extensions of credit became effective as of June 27, 1990, thus changing somewhat for the post-June, 1990 period the factors to be considered by the Commission in determining whether or not a credit extension to a political committee results in a corporate or excessive contribution. Guidance as to standards is also to be found in advisory opinions which were issued both before and after June 27, 1990, as well as in matters under review on the public record as of that date and later.

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1. Pre-June 27, 1990

(a). Standards to be applied

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The Commission regulations in force until mid-June, 1990 required anyone extending credit to a political committee to do so for no greater length of time than was normal business or trade practice, unless that person had made commercially reasonable attempts to collect. Otherwise, a contribution would result. (Former 11 C.F.R. § 100.7(a)(4)). These earlier regulations governing corporate activity also required that commercial vendors extend credit only in the ordinary course of business and on terms similar to those extended non-political clients. (Former C.F.R. § 114.10.) Pre-June, 1990 advisory opinions which addressed extensions of credit for direct-mail fundraising and telephone solicitations determined that so long as such extensions for start-up costs were normal industry practice and ordinarily extended by the particular vendor involved, they would not be considered contributions. However, by late 1989 the Commission was also emphasizing that agreements between vendors and political committees should have built-in safeguards of the vendors' financial interests. (AO 1989-21). This concern was restated in AO 1990-1 issued on March 1, 1990.

(b). Application to NSPAC and Companies

As stated above, in 1986 NSPAC entered into written agreements with American Telephone Marketing Group, Washington Intelligence Bureau, and Response Dynamics for telephone and direct mail fundraising services. The three agreements provided for payment upon receipt of invoices. The funds for such payments

were to come from an "Escrow Fund" into which proceeds from the fundraising activities would be placed. None of these agreements provided for advance payments by the committee. The agreement with Response Dynamics also granted that vendor the right of co-ownership of any list created pursuant to the agreement and the right to use that list without charge.

(1). The Contracts

The NSPAC agreement with Response Dynamics appears to have been the vendor's standard form contract. The Response Dynamics agreement provided that this vendor was to submit bills "from time to time" which were to be paid "no later than on the due date stated therein." If invoices remained unpaid for more than thirty days past the due date, Response Dynamics was authorized to use the Committee's list rental income to pay outstanding invoices from itself and The Best Lists. The agreement did not contain provisions for the timing of payments to other vendors to be selected by Response Dynamics, nor for alternative sources of such payments.

The second and third written agreements supplied by the respondents, both dated April 28, 1986, appear to have been individually prepared. The letter of agreement with American Telephone Marketing did not provide for the submission of invoices on any specific schedule, but required payment no later than 30 days after the invoice date. Invoices were to be paid directly from the Escrow Fund. By comparison, the contract with the Washington Intelligence Bureau provided that the vendor was to "render billings . . . by the 10th day of each month for services

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rendered in the preceding month and payment shall be due no later than thirty days from the date of such billing." The amount of compensation to be paid the Bureau was to be fixed by means of another agreement.

There was some protection built into the contract with Response Dynamics as follows:

1. The Escrowee was to disburse returns to suppliers before transferring funds to the committee.
2. The required payment by NSPAC of \$25,000 as liquidated damages if the agreement terminated before the termination date.
3. The right to list rental income if invoices were outstanding for more than thirty days.
4. The right of the Agency to "direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency" if invoices due a creditor for services provided per the agreement were unpaid ninety days after the original invoice date. The Agency would have the right to choose the signatory on the account.

NSPAC's agreement with Response Dynamics was open ended as to the quantity of services to be performed within the five year period of the contract. There was no specification of how many direct mail programs were to be undertaken or what the size of those programs would be.

(2). Execution

In their response in MUR 2638 dated July, 1988, the vendors asserted that NSPAC was then current on its invoices and that no debt was older than ninety days.

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(3). Vendor Safeguards

Another issue is whether the safeguards built into the contract, even if adequate at the beginning of the contract period, remained sufficient to protect the interests of the vendors. By mid-1989, if not earlier, such protections of Response Dynamic and American Telephone Marketing as were built into their contracts with NSPAC, and any protection of, at least, The Best Lists through the Response Dynamics contract, had become grossly inadequate to cover the debts which had grown throughout the life of the contracts. These protections did not begin to cover these creditors with regard to any additional services

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rendered after March, 1989 or so. The only actual amendment of the Response Dynamics contract as debts mounted involved a lowering of mailing list charges from \$50.00 to \$35.00 per thousand, not additions to vendor safeguards. Nor is there any evidence on the record to indicate that Mid-America Printing, Fulfillment Management, Direct Response Data and American Graphic Design were shielded at all and at any time from bearing fully the financial risks involved in their shares of the NSPAC programs. In summary, it is evident that the seven vendors assumed all of the risk of any and all additional extensions of credit at the least after early 1989.

Further, it does not appear that the later extensions of credit in 1989 and early 1990 were aimed solely at reducing the debts owed creditors. In 1989 NSPAC made \$12,150 in direct contributions to candidates. These contributions were made in February (\$500), May (\$2,000), June (\$1,000), July (\$1,000), September (\$3,750), October (\$1,800) and November (\$2,100).

In addition, beginning in May, 1989, the funds which were raised by NSPAC and not given out as contributions were used to pay down debts owed non-respondent vendors to a greater extent than they were used against the debts owed the respondent vendors. As can be seen on the chart on page 29, in May of that year no payments were made to any of the respondent vendors even though debts owed these companies totaled more than \$1,000,000, while over \$7,000 went to other companies to which a total of only about \$88,000 was owed. In June the seven companies received a total of \$2,820, while \$32,817 went to others. In August no payments were

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made to the seven companies while \$9,000 went to other non-respondent vendors. This pattern continued through the rest of 1989 and the first half of 1990.

Beginning in 1989 the year-by-year payment rates also show this favoritism toward the non-respondent vendors. In 1989 the vendors were paid at a rate of 14.9% versus 91.8% for non-respondents. For the whole of 1990 the rate for the seven vendors was 10.4% while that for non-respondent vendors was 63%; the rates for the period of January-June, 1990 were 8% and 60% respectively. Thus, it appears that both Response Dynamics and NSPAC, as the authorizers of expenditures, favored vendors not related to the former when reducing debts, indicating that Response Dynamics and its affiliated companies were willing to carry the committee with regard to debts already owed by not claiming equitable portions of committee receipts as their due, in addition to permitting additions to those debts as described above.

The contract provision permitting the use by Response Dynamics of any list generated under the contract did not link such use and profits derived therefrom to payments due on the contract itself. The right to list use was stated in absolute form and therefore represented a form of compensation over and above payments on invoices for services rendered. Thus, the right to list use did not constitute protection for the vendors against the committee's failure to make full payments of invoiced charges.

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The extensions of credit made by the seven vendors to NSPAC between April, 1989 and June, 1990 did not meet the Commission's requirements, and thus resulted in violations of 2 U.S.C. § 441b by NSPAC.

ii. Post-June 27, 1990

(1). Standards to be Applied

The Commission's revised regulations with regard to both corporate and non-corporate commercial vendors require that credit be extended only in the ordinary course of the creditor's business on terms "substantially similar" to those of extensions to non-political debtors. 11 C.F.R. § 116.3(a) and (b). Creditors must make "commercially reasonable" attempts to collect. 11 C.F.R. § 100.7(a)(4). "Ordinary course of business" is expressly defined to include the vendor's own procedures and past practice, prior experience with the particular debtor, and normal industry practice. 11 C.F.R. § 116.3(c).

Advisory opinions concerning fundraising contracts issued by the Commission after June, 1990 and before the end of NSPAC activity in mid-1991 placed even more emphasis than earlier ones upon the importance of advance payments to vendors and upon assurances that the vendors would not be left bearing most of the risk of a fundraising project. (See AO 1990-14 and AO 1990-19).

(2). Application to NSPAC and Companies

The post-June 27, 1990 extensions of credit to NSPAC by the seven vendors took place under the original contracts signed in 1986 and amended slightly in early 1989. By June, 1990 it was clear that the debts owed by NSPAC to the seven vendors had not

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only not been reduced, but had grown steadily since October, 1988. Yet these vendors continued to extend credit. Of special interest is the new debt totaling \$61,890 reported for February, 1991.

The vendors and NSPAC appear to have ignored at least two of the elements of the definition of "ordinary course of business" found in the new regulations, namely whether the vendor had received prompt and full payment in the past from the same committee and whether the credit extension "conformed to the usual and normal practice of in the commercial vendor's trade or industry." 11 C.F.R. § 116.3(c)(3). Past practice with NSPAC should by June, 1989 have alerted the vendors to the probability that advances would not be recouped. Further, it seems highly unlikely that further extension of credit under these circumstances would have complied with "usual and normal" industry practice when a client is so deeply in debt. Regarding the Commission's warning against such vendors assuming most of the risk of fundraising, it appears that the vendors took on all of the risk attendant to post-June, 1990 fundraising for NSPAC.

Between July and September, 1990, NSPAC and Response Dynamics appear to have continued to favor smaller vendors over the seven vendors when it came to dispensing receipts. As of June 30 debts owed the seven vendors totaled \$1,235,383. New debts accumulated in July, August and September totaled \$23,570, bringing total debts owed during that period to \$1,258,953. Payments during this three month period totaled \$31,684 for a payment rate of 2.5%. By contrast, debts owed other vendors as of June 30 totaled \$20,464. Debts incurred over the next three months totaled \$12,425,

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bringing the total to \$32,889. Payments to vendors other than the seven during this period totaled \$11,098, for a payment rate of 34%. Beginning in October somewhat more emphasis was placed upon directing receipts toward lowering the debt owed the seven.

As stated above, the Commission in Advisory Opinion 1991-32 emphasized that losses suffered by a vendor "would raise a rebuttable presumption that the company is not charging the usual and normal charge . . . ." The reverse, however, is not necessarily true; i.e., profit is not always sufficient proof that services have been provided "in the ordinary course of business."

In light of the above evidence of special treatment accorded NSPAC by the seven vendors, there reason to believe that NSPAC violated 2 U.S.C. § 441b(a) by accepting credit outside the ordinary course of business.

**B. Affiliation; Excessive Contributions**

2 U.S.C. § 433(b)(2) requires that statements of organization filed by political committee include the names and other information pertaining to committees affiliated with the reporting committee. 11 C.F.R. § 100.5(g)(2) defines "affiliated committee" to include, inter alia, all committees "established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons . . . ."

Pursuant to 2 U.S.C. § 441a(a)(5), "all contributions made by political committees established or financed or maintained or controlled by any . . . person, or by any group of such persons, shall be considered to have been made by a single political committee." See also 11 C.F.R. § 100.5(g)(3)(v). Pursuant to

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11 C.F.R. § 110.3(a), "all contributions made or received by more than one affiliated committee . . . shall be considered to be made or received by a single political committee. 2 U.S.C.

§ 441a(a)(1)(C) limits to \$5,000 the amount which any person may contribute to a political committee in any calendar year, while 2 U.S.C. § 441a(f) prohibits committees from accepting excessive contributions. 2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the contributions which any multicandidate committee may contribute to a candidate with respect to any federal election.

Factors to be considered by the Commission in determining whether there is evidence that one committee has been established, financed, maintained or controlled by another committee, resulting in affiliation, include, but are not limited to,

1. Whether a sponsoring organization owns a controlling interest in another organization sponsoring a political committee;
2. Whether a committee is able "to direct or participate in the governance of another . . . committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures";
3. Whether a committee "has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another . . . committee";
4. Whether a committee "has a common or overlapping membership with another . . . committee which indicates a formal or ongoing relationship between the . . . committees";
5. Whether a committee "has common officers or employees with another . . . committee which indicates a formal or ongoing relationship between the . . . committees";

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6. Whether a committee "has any members, officers or employees who were members, offices or employees or another . . . committee which indicates a formal or ongoing relationship between . . . the committees, or which indicates the creation of a successor entity";

7. Whether a committee "provides funds or goods in a significant amount or on an ongoing basis to another . . . committee . . .";

8. Whether a committee "causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another . . . committee";

9. Whether a committee or its agent "had an active or significant role in the formation of another . . . committee"; and

10. Whether the committees "have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the . . . committees."

11 C.F.R. § 100.5(g)(4)(ii)(A-J).

The complaint in MUR 3638 does not directly allege the affiliation of NSPAC and the RCC. Nevertheless, the statement in the article from the National Journal attached to the complaint concerning the overlapping of members of the committees' respective boards of directors and consultants has raised questions as to the role of NSPAC in the creation of the RCC and led to an examination of both committees' reports.

Of the factors in the Commission's regulations evidencing affiliation, those at present most clearly relevant to the NSPAC/RCC relationship appear to be the involvement of common officers or employees in the two ongoing committees; the past involvement by members, officers or employees of one committee in another committee with the resulting possibility of the "creation of a successor entity"; the active involvement by the agent of one

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in the formation of the second; and a pattern of overlapping contributors. According to the news article cited above, Floyd G. Brown, a consultant for NSPAC, founded the RCC in late 1989 and has acted as its chairman. Further, most of RCC's board members were allegedly on the board of NSPAC. Thus, whether one considers these committees to be contemporaries or predecessor/successor, their apparently shared personnel bring them within the above affiliation factors.

An examination of direct contributions made by NSPAC and the RCC in 1990 shows that each contributed to at least two of the same federal candidates, Jim Rappoport and Pat Saiki. More revealing are the committees' reports of contributions received. In 1990 the RCC received contributions from 70 individuals. Of these contributors at least 21, or almost one-third, were also reported as having made contributions to NSPAC either during that same year or in 1989. There is reason to believe that NSPAC violated 2 U.S.C. § 433(b)(2) by not reporting the RCC as an affiliated committee.

With affiliation NSPAC and RCC would have shared both contribution and receipt limitations pursuant to 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 110.3. NSPAC attained multicandidate status on October 24, 1986, while RCC qualified on June 18, 1990. As a committee affiliated with NSPAC, RCC would in fact have shared the older committee's multicandidate status at its inception in December, 1989. Thus, throughout 1990 the two committees were limited to a aggregation of \$5,000 in contributions

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per election to candidate committees and were permitted to receive a combined total of \$5,000 from individual contributors.

At present, as stated above, the two shared recipients which have been identified are Pat Saiki and Jim Rappoport. The committees' combined contributions to these candidates did not exceed \$5,000 per election. It does appear, however, that combined receipts from at least one of the 21 shared contributors exceeded \$5,000. These excessive contributions were as follows:

	<u>NSPAC</u>	<u>RCC</u>
Roy W. Arledge	5/25/90 - \$ 200	2/26/90 - \$ 250
	7/3/90 - 200	5/7/90 - 300
	8/6/90 - 300	6/18/90 - 400
	8/17/90 - 300	6/29/90 - 500
	10/16/90 - 500	7/16/90 - 200
	\$1,500	8/2/90 - 200
		8/7/90 - 750
		8/15/90 - 500
		8/16/90 - 200
		8/20/90 - 1,000
		8/23/90 - 250
		9/20/90 - 200
		10/10/90 - 200
		10/31/90 - 2,000
		\$6,950

Thus, there is reason to believe that NSPAC and Elizabeth I. Fediay violated 2 U.S.C. § 441a(f) by accepting contributions in excess of the \$5,000 limitation.

**C. Mis-Reporting of Independent Expenditure-Related Debts**

"Independent expenditure" is defined at 2 U.S.C. § 431(17) as an "expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate . . . ." 2 U.S.C. § 434(c) requires that political committees which make independent expenditures report such expenditures in excess of \$250 in a

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calendar year as required by 2 U.S.C. § 434(b)(6)(B)(iii). This latter provision requires that the report of an independent expenditure include the person receiving the disbursement, the date, the amount and the purpose of any expenditure in excess of \$200. 2 U.S.C. § 431(9)(A)(i) includes in the definition of "expenditure . . . a written contract, promise or agreement to make an expenditure." 2 U.S.C. § 434(b)(8) requires that political committees report the amount and nature of outstanding debts and obligations owed by the committee.

In the present matter NSPAC reported hundreds of thousands of dollars in debts owed on Schedule D's, but until June, 1989 did not state that these debts were related to independent expenditures on behalf of named candidates. These debts included the large sums discussed above which were owed for direct mail and telemarketing services to the respondent vendors. These same vendors were also reported as recipients of partial payments for the same services and programs as those involved in the debts. NSPAC reported the payments as independent expenditures on behalf of George Bush and others on Schedule E's; however, prior to a series of amendments filed on June 29, 1989 for reports starting with the 1988 Post Election Report, it reported the debts only as being for "printing," "professional fees," "lists," etc. Thus, the fact that sizeable debts had been incurred by NSPAC in connection with independent expenditures was not revealed, as required, before the 1988 election, even though NSPAC had begun reporting independent expenditures to the same creditors on behalf of George Bush and other candidates as early as June, 1987.

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There is reason to believe that NSPAC and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. § 434(c) by failing fully to report debts owed as related to independent expenditures.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OCTOBER 3, 1994

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

William J. Olson, Esquire  
John S. Miles, Esquire  
8180 Greensboro Drive, Suite 1070  
McLean, Virginia 22102-3823

RE: MUR 3638  
Presidential Victory Committee  
Robert E. Miller, Jr., as  
treasurer

Dear Mr. Olson and Mr. Miles:

On September 2, 1992 and October 8, 1992 the Federal Election Commission notified your clients, the Presidential Victory Committee ("the Committee") and Robert E. Miller, Jr., as treasurer, of two complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were enclosed with the notifications. These complaints were designated MUR 3578 and MUR 3638.

Upon further review of the allegations contained in the complaints, and information supplied by your clients, the Commission on September 27, 1994, found that there is reason to believe the Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. §§ 433(b)(2), 434(c), and 441a(f), provisions of the Act. The Commission also found reason to believe that the Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 434(a)(1), but voted to take no further action in this regard. Further, the Commission found no reason to believe that the Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 434(b)(2) or (b)(8) and 2 U.S.C. § 441b(a). Finally, the Commission voted to merge the two matters, with the resulting matter to be designated MUR 3638. 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 Subpoena to Produce Documents and Order to Submit Written Answers must be submitted to the General Counsel's Office

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MUR 3638

William J. Olson, Esquire

Page 2

within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the subpoena and order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

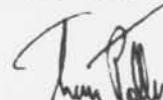
If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter 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 your clients wish the investigation to be made public.

If you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

For the Commission,

  
Trevor Potter  
Chairman

Enclosures

Subpoena and Order

Factual and Legal Analysis



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Presidential Victory Committee  
c/o William J. Olson, Esquire  
John S. Miles, Esquire  
William J. Olson, P.C.  
8180 Greensboro Drive, Suite 1070  
McLean, Virginia 22102-3823

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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MUR 3638  
Presidential Victory Committee  
Page 2

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 3<sup>rd</sup>,  
day of October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories  
Document Request

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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.

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.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

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"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"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.

"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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INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. Produce copies of the Presidential Victory Committee's constitution and bylaws.
2. Produce copies of minutes of all meetings held in 1991 and 1992 for purposes of establishing the Presidential Victory Committee.
3. Produce copies of tape recordings of the proceedings of all meetings held in 1991 and 1992 for purposes of establishing the Presidential Victory Committee.
4. Identify all individuals who took part in decisions leading to the establishment of the Presidential Victory Committee.
5. List by date, participants and location all meetings held for purposes of establishment of the Presidential Victory Committee.
6. Identify by year(s) of service all members of the Presidential Victory Committee's Board of Directors who have served between PVC's creation and the date of this Order.
7. Identify by year(s) of service and office all officers of the Presidential Victory Committee who have served between the committee's creation and the date of this Order.
8. Identify by year(s) of service and position all employees of the Presidential Victory Committee who have served between the committee's creation and the date of this Order.
9. List by date and amount any and all transfers of funds made between the Presidential Victory Committee and the Republican Challengers Committee from September 1, 1991 to the date of this Order.
10. List by date and amount any and all transfers of funds made between the Presidential Victory Committee and the National Security Political Action Committee from September 1, 1991 to the date of this Order.
11. Produce copies of all correspondence between the Presidential Victory Committee and the Republican Challengers Committee from September 1, 1991 to the date of this Subpoena.

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MUR 3638  
Presidential Victory Committee  
Page 6

12. Produce copies of all correspondence between the Presidential Victory Committee and the National Security Political Action Committee from September 1, 1991 to the date of this Subpoena.

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Presidential Victory Committee  
Robert E. Miller, Jr., as treasurer

**MUR: 3638**

**I. GENERATION OF MATTERS**

This matter, as it involves the Presidential Victory Committee ("PVC") and Robert E. Miller, Jr., as treasurer, was initiated by a complaint filed with the Federal Election Commission by the Democratic National Committee on August 12, 1992, and designated MUR 3578. See 2 U.S.C. § 437g(a)(1). MUR 3578 and MUR 3638 have been merged.

**II. SUMMARY OF ALLEGATIONS**

The complaint in MUR 3578 alleges, inter alia, that an individual, Wesley West of Houston, Texas, made contributions to the PVC totaling \$14,000 during the 1992 calendar year, resulting in violations of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9 by the PVC; that the PVC and the Republican Challengers Committee ("the RCC") are affiliated, a status which has not been reported by the PVC in violation of 2 U.S.C. § 433(b)(2) and of 11 C.F.R. §§ 102.2(a)(1)(ii) and 102.2(b); and that reports filed by the PVC in 1992 did not contain the signature of the committee's treasurer or assistant treasurer, in violation of 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.14.

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III. FACTUAL AND LEGAL ANALYSIS

A. AFFILIATION

1. The Law

2 U.S.C. § 433(b)(2) requires that statements of organization filed by political committee include the names and other information pertaining to committees affiliated with the reporting committee. 11 C.F.R. § 100.5(g)(2) defines "affiliated committee" to include, inter alia, all committees "established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons . . . ."

Pursuant to 2 U.S.C. § 441a(a)(5), "all contributions made by political committees established or financed or maintained or controlled by any . . . person, or by any group of such persons, shall be considered to have been made by a single political committee." See also 11 C.F.R. § 100.5(g)(3)(v). Pursuant to 11 C.F.R. § 110.3(a), "all contributions made or received by more than one affiliated committee . . . shall be considered to be made or received by a single political committee."

Factors to be considered by the Commission in determining whether there is evidence that one committee has been established, financed, maintained or controlled by another committee, resulting in affiliation, include, but are not limited to,

1. Whether a sponsoring organization owns a controlling interest in another organization sponsoring a political committee;
2. Whether a committee is able "to direct or participate in the governance of another . . . committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures";

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3. Whether a committee "has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another . . . committee";

4. Whether a committee "has a common or overlapping membership with another . . . committee which indicates a formal or ongoing relationship between the . . . committees";

5. Whether a committee "has common officers or employees with another . . . committee which indicates a formal or ongoing relationship between the . . . committees";

6. Whether a committee "has any members, officers or employees who were members, offices or employees or another . . . committee which indicates a formal or ongoing relationship between . . . the committees, or which indicates the creation of a successor entity";

7. Whether a committee "provides funds or goods in a significant amount or on an ongoing basis to another . . . committee . . .";

8. Whether a committee "causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another . . . committee";

9. Whether a committee or its agent "had an active or significant role in the formation of another . . . committee"; and

10. Whether the committees "have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the . . . committees."

11 C.F.R. § 100.5(g)(4)(ii)(A-J).

2 U.S.C. § 441a(a)(1)(C) limits to \$5,000 the amount which any person may contribute to a political committee, other than an authorized or national party committee, in any calendar year, while 2 U.S.C. § 441a(f) prohibits committees from accepting excessive contributions. 2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the contributions which any multicandidate committee may contribute to a candidate with respect to any federal election.

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## 2. Factual Background

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The Republican Challengers Committee filed its Statement of Organization with the Commission on December 5, 1989. Its reported address was 1615 L Street, NW, Washington, DC, although the named custodian of records and treasurer was Robert E. Miller, Jr., 1200 Third Ave., San Diego, California. George Mason Bank in Fairfax, Virginia was listed as the committee's depository. On April 27, 1992, the RCC informed the Commission that its address had changed to 450 "A" Street, San Diego. As of the committee's 1993 November Monthly Report, Mr. Miller was still the treasurer.

According to an article published in the July 21, 1990 issue of the National Journal, which is attached to the complaint in MUR 3638, the RCC was "established" by Floyd Brown who has served as its chairman. In his sworn affidavit in MUR 3578 Mr. Brown confirms that he is the chairman of the RCC.

Shortly after the RCC filed its 1991 Year End Report, the PVC filed its Statement of Organization. The address listed for this committee was 1815 H Street, NW, Washington, DC; however, Robert Miller of Miller/Roos and Company was listed as treasurer, and his address as 1200 Third Avenue, San Diego. On the Committee's reports Mr. Miller signed as Robert E. Miller, Jr. John A. Fitch was named as executive director and assistant treasurer at the Washington office. The committee's depository was George Mason Bank of Fairfax, Virginia. On March 20, 1992, an amendment to the Statement of Organization was filed to add David Bossie of 38 Ivy Street, SE, Washington, DC, as assistant treasurer. The



committee's address was also changed to the same Ivy Street address, while its depository became First Interstate Bank of San Diego. More recently, on June 1, 1993, the committee filed an amended Statement of Organization with a new address, 450 "A" Street, San Diego, the same address as that of the RCC. As of the committee's 1994 April Monthly Report, Mr. Miller remained treasurer.

According to news articles attached to the complaint in MUR 3638 from the May 3, 1992 National Journal, the July 9, 1992 Washington Post, and the March 31, 1992 Philadelphia Inquirer, Floyd Brown "set up" and chaired the PVC. Mr. Brown has confirmed his position as chair in his affidavit in response to the complaint in MUR 3578.

The RCC made a total of \$4,000 in contributions in October and November, 1990, to six candidates for the U.S. Senate: Hank Brown, Hal Daub, Jim Rappaport, James Tauke, Lynn Martin and Pat Saiki, and to one Congressional candidate, Robert Williams. No additional direct contributions have been reported since that time, and thus none were apparently made in 1992. Nor have any independent expenditures been reported by the RCC.

In 1992 the PVC made a total of \$7,750 in contributions to nine candidates for the Senate and the U.S. House of Representatives; the recipients included the authorized committees of Bruce Herschensohn, Duane Sommers, Pam Roach, Mark Siljander, Tim Hutchinson, James Lacey, Tom Scott, William Dannemeyer and Enid Greene. The PVC's 1992 disbursements also included \$2,060,810.97 in independent expenditures made on behalf of "George Bush for President."

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3. The Complaint

The complaint in MUR 3578 alleges that the PVC and the RCC "were established, and are financed, maintained or controlled by the same person or group of persons and are thereby affiliated." In support of this allegation, the complainant asserts the following:

1. Both committees employ Floyd Brown "in an executive capacity." Mr. Brown is both founder and chairman of PVC and is chairman of RCC. Robert E. Miller, Jr., serves as treasurer of both committees.

The two committees until recently shared the same depository, namely The George Mason Bank of Fairfax, Virginia, and that a caller had been informed by the PVC that contributions to both committees could be made by using a single check.

3. The two committees share seven common vendors.

4. Response to Complaint

In his response and sworn affidavit in MUR 3578, Floyd Brown states that he is the "Chairman of Presidential Victory Committee" and the chairman of the RCC. In addition, Robert E. Miller was the treasurer of the RCC at the time he was named treasurer of the PVC.

Mr. Brown in his affidavit, as does the PVC, asserts that the RCC . . . is no longer operational as a political committee, that it was not operational with respect to the 1992 election cycle, and that it has not been operational for many months (beginning well before the formation of PVC) except with respect to efforts to retire the debt it has accrued. "In my opinion, there is no affiliation between PVC and RCC. They are completely different committees formed in different time periods for different

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purposes, and RCC has not been operational in the 1992 election cycle."

### 5. Analysis

It is clear that the RCC and the PVC were founded and have been directed by the same individuals, thus meeting, at the least, the requirements of 11 C.F.R. § 100.5(g)(4)(ii)(E) (common officers or employees) and (I) (significant role by one in formation of second). Thus, there is reason to believe that the PVC and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 433(b)(2) by not reporting the RCC as an affiliated committee.<sup>1</sup>

#### B. Receipt of Excessive Contributions

2 U.S.C. § 441a(a)(1)(C) limits to \$5,000 the amount which an individual may contribute in any calendar year to a political committee which is neither an authorized committee nor a national party committee. 2 U.S.C. § 441a(f) prohibits a committee from accepting contributions in excess of the limitations established at 2 U.S.C. § 441a.

1. The complaint in MUR 3578 cites 11 C.F.R. § 102.2(b) as a provision violated by the PVC. This regulatory provisions defines "affiliated committee" and thus is not one which is subject to violation.

With affiliation, the RCC and the PVC would have shared both contribution and receipt limitations pursuant to 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 110.3. However, as the PVC has argued, the two committees were active during different time periods and supported different candidates.

Further, an examination of the Commission's index of itemized contributions received by the RCC and by the PVC in 1991-92 shows little overlap and reveals no instances in which the combination of an individual's contributions to the two committees totaled more than \$5,000 in a single calendar year. In fact, the RCC reported receipts of only \$756.87 in 1992, while the PVC did not begin operations until April of that year.

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11 C.F.R. § 103.3(b)(3) provides that contributions which are not excessive on their face, but which become excessive when aggregated with other contributions from the same contributor, may be either placed into a campaign depository pending reattribution to another contributor or redesignation to another election. If reattribution or redesignation is not received or is not possible, a refund must be made within 60 days of receipt of the excessive portion.

As stated above, the complaint in MUR 3578 alleges that Mr. Wesley West of Houston, Texas contributed \$14,000 to the PVC in 1992. On September 11, 1992, counsel for Mrs. Wesley West responded to the complaint, explaining that Mr. West had died in 1984 and that the contributions at issue were from Mrs. West, then 84 years of age. He stated that in May, 1992 counsel's law firm had been asked by Mrs. West's grandson, Stuart Stedman, in response to an inquiry from the National Republican Senatorial Committee ("NRSC"), to determine whether Mrs. West's 1992 campaign contributions were in compliance with federal campaign finance laws. Counsel for Mrs. West stated further that, as a result of contacts with recipients of Mrs. West's 1992 contributions, it was determined that between February 29 and May 2, 1992, she had made a total of \$15,000 in contributions to the PVC's federal account.

On May 27, 1992, the PVC wrote to Mrs. West confirming her contributions and asking that she redesignate \$10,000 to a PVC non-federal account. On June 5, 1992, Mrs. West requested in writing a refund of the \$10,000 and on August 13, 1992, Floyd

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Brown, chairman of PVC, hand delivered a refund check to her. Copies of this correspondence are attached to the response.

The PVC's response to the complaint in MUR 3578 acknowledges that the committee received excessive contributions from Mrs. West, although the figure given is \$14,000 rather than \$15,000. Counsel argues that the refund, while it should have come at an earlier date, was in fact made before the filing of a complaint or action by the Commission. Attached to this response is a copy of the refund check which is dated August 5, 1992.

Mrs. West's contributions to the PVC were as follows:

<u>Date</u>	<u>Amount</u>
February 29, 1992	\$ 1,000
March 7, 1992	5,000
March 16, 1992	1,000
March 23, 1992	5,000
March 23, 1992	1,000
May 2, 1992	<u>2,000</u>
Total	\$15,000

Thus, she first exceeded her \$5,000 limitation on March 7, 1992. The Committee refunded the \$10,000 in excessive contributions by means of a check which was dated August 5, 1992, but which was not delivered until August 13, 1992. The Committee's refund was not made within sixty days of the receipt of any portion of Mrs. West's excessive contributions.

There is reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated U.S.C. § 441a(f).

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C. Absence of Signature of Treasurer

The complaint in MUR 3578 alleges that the PVC violated 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.14(a) by having had its 1992 March, April and June and July Monthly Reports and amended reports signed by Chris Miller rather than Robert E. Miller, Jr., the treasurer, or David Bossie, the assistant treasurer.

2 U.S.C. § 434(a)(1) requires that the treasurer of a committee file reports of receipts and disbursements, and sign each required report. 11 C.F.R. § 104.14(a) states that "[e]ach individual having the responsibility to file a designation, report or statement required under this subchapter shall sign the original designation, report or statement."

An examination of the PVC's reports reveals, and the committee admits, that the treasurer, Robert E. Miller, did not sign the front page of the reports cited by the complainant. The response states that delegation of the signatures was made to Mr. Miller's son and partner "upon informal advice received by Mr. Miller from an FEC employee." Amended reports with Robert Miller's signature have been filed, apparently in response to the complaint, and it is stated that the practices of letting someone else sign the reports "will not be repeated."

There is reason to believe that the PVC and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 434(a)(1); however, in light of the amended reports, the Commission has determined to take no further action as to this violation.

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D. Mis-Reporting of Independent Expenditure-Related Debts

"Independent expenditure" is defined at 2 U.S.C. § 431(17) as an "expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate . . . ." 2 U.S.C. § 434(c) requires that political committees which make independent expenditures report any such expenditures in excess of \$250 in a calendar year as required by 2 U.S.C. § 434(b)(6)(B)(iii). This latter provision requires that the report of an independent expenditure include the person receiving the disbursement, the date, the amount and the purpose of any expenditure in excess of \$200. 2 U.S.C. § 431(9)(A)(i) includes in the definition of "expenditure . . . a written contract, promise or agreement to make an expenditure." 2 U.S.C. § 434(b)(8) requires that political committees report the amount and nature of outstanding debts and obligations owed by the committee.

The PVC reported \$2,060,810 in independent expenditures in 1992. It also accumulated debts which totaled as much as \$40,634 as of October 14, 1992, and reported these debts on Schedule D's. The committee did not, however, report any of these debts as related to independent expenditures. Most were reported as owed for legal fees, office supplies, travel, clipping services, delivery services, and telephones and, thus, did not apparently involve activities expressly advocating the election or defeat of a candidate. Several of the debts, however, involved "media" expenses and "consulting fees" owed vendors which had also been reported as recipients of independent expenditures for the same purposes on

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behalf of specific candidates. Thus, these latter two categories of debts were presumably related to independent expenditures and should have been reported as such.

There is reason to believe that the PVC violated 2 U.S.C. § 434(c) by failing to report fully debts incurred in connection with independent expenditure programs.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OCTOBER 3, 1994

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Paul E. Sullivan, Esquire  
1225 I Street, NW, Suite 500  
Washington, DC 20005

RE: MUR 3638  
Republican Challengers  
Committee  
Robert E. Miller, Jr., as  
treasurer

Dear Mr. Sullivan:

On September 2, 1992 and October 9, 1992 the Federal Election Commission notified the Republican Challengers Committee ("the Committee") and Robert E. Miller, Jr., as treasurer, of two complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were enclosed with the notifications. These complaints were designated MUR 3578 and MUR 3638.

Upon further review of the allegations contained in the complaints, and information supplied by your clients, the Commission, on September 27, 1994, found that there is reason to believe the Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. §§ 441b(a), 433(b)(2), and 441a(f), provisions of the Act. The Commission also voted to merge the two matters, with the resulting matter to be designated MUR 3638. 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 Subpoena to Produce Documents and Order to Submit Written Answers 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 subpoena and order. 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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MUR 3638

Paul E. Sullivan, Esquire

Page 2

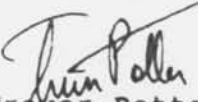
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending 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 Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

For the Commission,

  
Trevor Potter  
Chairman

Enclosures

Subpoena and Order

Factual and Legal Analysis



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3638

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Republican Challengers Committee  
c/o Paul E. Sullivan, Esquire  
1225 I Street, NW  
Suite 500  
Washington, DC 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 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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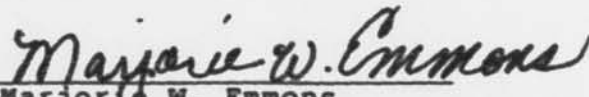
MUR 3638  
Republican Challengers Committee  
Page 2

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 31<sup>st</sup>  
day of October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Interrogatories  
Document Request

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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.

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 respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"The Companies" shall mean Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc.

"Escrowee" shall mean the third-party hired to receive and tabulate all contributions and to pay direct mail suppliers, pursuant to the contract between the Companies and the RCC dated November 7, 1989.

"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.

"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

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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.

INTERROGATORIES AND REQUESTS FOR DOCUMENTS

1. Produce all documents related to the negotiation of the contract signed by the RCC with Response Dynamics, Inc., on November 7, 1989
2. Produce all contracts or letters of agreements entered into by Response Dynamics, Inc. on behalf of the RCC with the other six Companies.
3. Produce all contracts or letters of agreements entered into by the RCC directly with any and all of the Companies besides Response Dynamics, Inc.
4. Identify the individuals who represented Response Dynamics in the 1989 negotiations with the RCC.
5. Identify the individuals who represented the RCC in the 1989 negotiations with Response Dynamics.
6. Identify the individuals at each of the Companies who had primary responsibility for performance of the Response Dynamics contract with the RCC dated November 7, 1989.
7. State whether Response Dynamics, as "the Agency," served as the principal contractor for the contract with the RCC dated November 7, 1989.
8. Provide a listing of all direct mail and telemarketing projects carried out by the Companies for the RCC, pursuant to the contract with Response Dynamics dated November 7, 1989, together with the dates and costs of each project.

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9. Produce copies of all direct mail solicitations produced and mailed pursuant to the RCC's contract with Response Dynamics dated November 7, 1989.
10. Produce copies of all telemarketing scripts used in performance of the RCC's contract with Response Dynamics dated November 7, 1989.
11. For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by the seven Companies to the RCC.
12. State whether the Washington Intelligence Bureau acted as Escrowee pursuant to Section 5(c) of the Response Dynamics contract with the RCC dated November 7, 1989. If no, please identify any other entity which performed this service under the contract.
13. Produce all documents related to procedures used for authorization by Response Dynamics and the RCC of payments to be made to vendors by the Escrowee from the Escrow Fund established pursuant to Section 5(c) of the Response Dynamics contract with NSPAC dated November 7, 1989. If there were non-written procedures or practices, please describe in detail.
14. Describe the policies and practices used by Response Dynamics and the Escrowee to determine at any particular point in time which vendor(s) were to receive payments for services rendered to the RCC pursuant to the contract with Response Dynamics dated November 7, 1989.
15. Describe the role played by the RCC in determinations at any particular point in time as to which vendor(s) were to receive payments for services rendered to the RCC pursuant to the contract with Response Dynamics dated November 7, 1989.
16. State whether funds advanced by Response Dynamics for postage, telephone vendors and other fund raising services were always reimbursed before proceeds from fundraising activities were disbursed to the RCC or to other vendors, pursuant to Section 5(f) of the contract with the RCC dated November 7, 1989. If no, list and describe the instances in which such reimbursements were not made.
17. State how much of the debt presently owed Response Dynamics by the RCC is comprised of unreimbursed advances.

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18. State whether an Escrow Account was ever established by Response Dynamics, pursuant to Section 5(e) of the contract with the RCC dated November 7, 1989.
19. State whether payments to vendors for services rendered to the RCC pursuant to the contract with Response Dynamics date November 7, 1989 were made directly to each vendor or through Response Dynamics.
20. Identify all individuals who took part in decisions leading to the establishment of the RCC.
21. List by date, participants and location all meetings held for purposes of establishment of the RCC.
22. Identify by year(s) of service all members of the RCC's Board of Directors who have served between the RCC's creation and the date of this Order.
23. Identify by year(s) of service and office all officers of the Presidential Victory Committee who have served between the RCC's creation and the date of this Order.
24. Identify by year(s) of service and position all employees of the RCC who have served between the RCC's creation and the date of this Order.
25. List by date and amount any and all transfers of funds between the RCC and the Presidential Victory Committee and between the RCC and the National Security Political Action Committee.
26. Provide copies of the RCC's constitution and bylaws.
27. Provide copies of minutes of all meetings held in 1989 for purposes of establishing the RCC.
28. Provide copies of any and all tape recordings of the proceedings of any and all meetings held in 1989 for purposes of establishing the RCC.
29. Provide copies of all correspondence between the RCC and the Presidential Victory Committee from September 1, 1991 to the date of this Subpoena.

MUR 3638  
Republican Challengers Committee  
Page 8

30. Provide copies of all correspondence between the RCC and the National Security Political Action Committee between September 1, 1989 and the date of this Subpoena.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Republican Challengers Committee  
Robert E. Miller, Jr., as treasurer

MUR: 3638

**I. GENERATION OF MATTER**

This matter was generated by two complaints filed with the Federal Election Commission by the Democratic National Committee on August 12, 1992 and October 5, 1992 and designated MUR 3578 and MUR 3638. See 2 U.S.C. § 437g(a)(1). The two matters have been merged.

**II. SUMMARY OF ALLEGATIONS**

**A. MUR 3638**

The complaint in MUR 3638 alleges that the Republican Challengers Committee ("RCC") has been extended "commercially unreasonable" credit by seven vendor companies: Response Dynamics, Inc., Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc. According to the complaint and attached materials, these allegedly improper extensions of credit began in 1988 in connection with direct mail and telemarketing fundraising services performed for the National Security Political Action Committee ("NSPAC") by the companies, and continued into 1992 in the form of like services performed for the RCC. The complainant alleges that credit extended to the RCC "has not been extended in the ordinary course of business and the

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terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." The complaint notes that Response Dynamics has filed suit against another customer to collect unpaid bills, but not against the RCC. The complaint concludes that the RCC has accepted illegal contributions from the vendors.

**B. MUR 3578**

The earlier complaint, which became MUR 3578, alleged that the RCC and the Presidential Victory Committee are affiliated, a status which has not been reported by the RCC in violation of 2 U.S.C. § 433(b)(2) and of 11 C.F.R. §§ 102.2(a)(1)(ii) and 102.2(b).

**III. FACTUAL AND LEGAL ANALYSIS**

**A. INTRODUCTION AND BACKGROUND**

The principal issue addressed in this Analysis is whether the RCC violated 2 U.S.C. § 441b by accepting in-kind contributions in the form of extensions of credit outside the ordinary course of business. The Analysis also addresses the other issues involving affiliation, excessive contributions, and reporting problems alleged by the complainant in MUR 3578.

**1. NSPAC**

NSPAC filed a Statement of Organization with the Commission on April 24, 1986. Elizabeth I. Fediay was reported to be the secretary/treasurer and the committee's address as 3200 Morrison St., NW, Washington, DC. According to a portion of the Almanac of Federal PACs: 1990 attached to the complaint, NSPAC's advisory board included retired Admiral Thomas Moorer, retired Rear Admiral



C.A. "Mack" Hill, and former United States Senator Jeremiah Denton.

According to sworn affidavits submitted in MUR 3069, Floyd G. Brown was one of the principal individuals involved with the NSPAC media program in 1988 in support of the candidacy of George Bush.<sup>1</sup> In MUR 3556 the complainant submitted a videotape allegedly distributed to potential contributors to the Presidential Victory Committee in 1992 in which Mr. Brown indicated that he had been the "political director" of NSPAC in 1988.

NSPAC's first report, the 1986 June Monthly, showed \$30,720.76 in contributions received, \$2,809.72 in operating expenditures for salary payments and postage, and a debt of \$43,3112.15 owed respondent American Telephone Marketing Group. In June 1986 the committee incurred another \$3,628.37 in debts owed American Telephone Marketing Group, but also made \$26,467.50 in payments to this vendor. The committee began making payments to Response Dynamics in July, 1986, and incurred debts owed The Best Lists beginning in August of that year. Mid-America Printing became a creditor as of March, 1987, as did American Graphic Design in July, Fulfillment Management in August and Direct Response Data Management Service in September, 1987. One or more of these seven companies continued to provide services and/or to submit invoices to NSPAC until June, 1991, and debts owed by this committee to these vendors continued to accumulate. As of the end of June, 1991, remaining aggregated debts owed these seven

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1. Others included Elizabeth Fediay, Larry McCarthy, Craig Shirley, and Anthony Fabrizio.

corporations by NSPAC totaled \$1,268,939.19, while reported cash on hand came to \$78.79.

## 2. Republican Challengers Committee

The Republican Challengers Committee filed its Statement of Organization with the Commission on December 5, 1989. Its reported address was 1615 L Street, NW, Washington, DC, although the named custodian of records and treasurer was Robert E. Miller, Jr., 1200 Third Ave., San Diego, California. George Mason Bank in Fairfax, Virginia was listed as the committee's depository. On April 27, 1992, the RCC informed the Commission that its address had changed to 450 "A" Street, San Diego. As of the committee's 1993 November Monthly Report, Mr. Miller was still the treasurer.

According to an article published in the July 21, 1990 issue of the National Journal, which is attached to the complaint in MUR 3638, the RCC was "established" by Floyd Brown who has served as its chairman. In his sworn affidavit in MUR 3578 Mr. Brown has confirmed that he is the chairman of the RCC. The National Journal article also stated that "five members of the RCC board of directors are professional consultants and most [unnamed] were involved with NSPAC."

The RCC's third report of contributions and expenditures, the 1990 February Monthly Report, showed contributions received totaling \$1,495, \$253 in expenditures, and \$23,199.26 in debts owed, all but \$1,000 of the latter having been incurred during January. The reported creditors included:

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Response Dynamics, Inc.	- \$13,229.15
Best Lists, Inc.	- 3,371.26
American Graphics Design	- 1,520.50
Direct Response Data Management	- 4.86

Mid-America Printing and Fulfillment Management were reported as additional creditors as of March and April, 1990. American Telephone Marketing Group became a creditor in July, 1990. As of May, 1992 the total debt owed these seven vendors by the RCC had reached \$95,027.77, the level at which it has remained to the present time; cash on hand at the end that same month was \$103.66.

RCC's reported activities from January 1990 through December 1992 resulted in the following aggregate sums:

<u>Year</u>	<u>Direct Contributions</u>	<u>Independent Expenditures</u>	<u>Debts Owed Respondent Vendors At End of Year</u>	<u>Debts Owed Other Vendors</u>
1990	\$4,000	\$ -0-	\$ 92,682.74	\$7,284.53 <sup>2</sup>
1991	-0-	-0-	91,949.07	11,731.28
1992	-0-	-0-	95,027.77	13,075.33

### 3. Presidential Victory Committee

Shortly after the RCC filed its 1991 Year End Report showing debts totaling \$91,949.07 owed the seven vendors listed above, the PVC filed its Statement of Organization. The address listed for this committee was 1815 H Street, NW, Washington, DC; however, Robert Miller of Miller/Roos and Company was listed as treasurer, and his address was listed as 1200 Third Avenue, San Diego. On the Committee's reports Mr. Miller signed as Robert E. Miller, Jr. John A. Fitch was named as executive director and assistant

2. As with NSPAC, this column includes debts owed the Washington Intelligence Bureau. Such debts reached \$2,692 in May, 1992 and have remained there.

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treasurer at the Washington office. The committee's depository was George Mason Bank of Fairfax, Virginia. On March 20, 1992, an amendment to the Statement of Organization was filed to add David Bossie of 38 Ivy Street, SE, Washington, DC, as assistant treasurer. The committee's address was also changed to the same Ivy Street address, while its depository became First Interstate Bank of San Diego. More recently, on June 1, 1993, the committee filed an amended Statement of Organization with a new address, 450 "A" Street, San Diego, the same address as that of the RCC. As of the committee's 1993 November Monthly Report, Mr. Miller remained treasurer.

According to news articles attached to the complaint in MUR 3638 from the May 3, 1992 National Journal, the July 9, 1992 Washington Post, and the March 31, 1992 Philadelphia Inquirer, Floyd Brown "set up" and chaired the PVC. Mr. Brown has confirmed his position is chair in his affidavit in response to the complaint in MUR 3578.

The PVC's first monthly report, for February, 1992, showed \$27,304 in contributions received (\$20,704 unitemized), \$510.55 in expenditures and no debts owed. As of March 31, 1992 this committee's reported receipts for that month had risen to \$224,322.16, including \$58,750 in itemized and \$165,572.16 in unitemized contributions. In this same report the committee also reported \$5,013.04 in operating expenses, \$229,684.15 in independent expenditures in support of "George Bush for

President," and no debts owed. The independent expenditure figure for March included the following aggregate payments to the respondent vendors:

Response Dynamics, Inc	-	\$144,411.98
American Telemarketing Group	-	25,515.00
The Best Lists	-	36,308.32
American Graphic Design	-	1,988.50
Direct Response Data Management	-	427.28

For April, 1992, the PVC's reported independent expenditures involved additional large disbursements to the five vendors listed immediately above, as well as the following:

Mid America Printing	-	\$ 24,353.00
Fulfillment Management Service	-	2,123.97

The PVC also reported \$11,356.06 in debts accumulated in April, but none were owed to the respondent vendors.

During the remainder of 1992 the PVC's accumulated debt reached a high of \$40,6334.44, as reported in its Pre-General Report filed on October 22, 1992. Only one of this committee's creditors, Miller/Roos and Company of San Diego, was also continuously a creditor of the RCC. None of the seven vendor respondents in MUR 3638 are among those PVC creditors to which outstanding debts are owed.

#### 4. The Companies

According to information received by the Commission in the context of MUR 2638 and in the present matter, Response Dynamics, American Telephone Marketing Group, The Best Lists, Fulfillment

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Management Services, Direct Response Data Management, Mid-America Printing, and American Graphic Design were all founded, and are still owned, by David A. Kunko and Ronald Kanfer. Mr. Kunko is responsible for business and accounting functions, and Mr. Kanfer for creative matters.

Response Dynamics was incorporated in March, 1981 and The Best Lists in November of the same year. The year of American Telephone Marketing Group's incorporation was 1983; this corporation is no longer active, having merged with Response Dynamics in 1990, with Response Dynamics the surviving entity. Mid-America Printing's date of incorporation was December 29, 1986, while Fulfillment Management Service and Direct Response Data Management Service were both incorporated on June 19, 1987.

According to information provided in the context of MUR 2638, American Graphic Design is a division of Response Dynamics. For purposes of this Analysis, American Graphic Design will be treated as a separate entity. The same is true with regard to American Telephone Marketing Group.

The Companies together perform direct mail, telemarketing, mailing list brokerage, letter production, filing, printing and inserting services. An eighth entity, Washington Intelligence Bureau, which is assertedly not affiliated with the respondent companies, has served as the escrow agent for contributions received as a result of solicitations undertaken on behalf of the Companies' clients.

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**B. EXTENSIONS OF CREDIT TO THE RCC**

**1. The Law**

The Act prohibits any corporation from making a contribution or expenditure in connection with any federal election, and any committee from accepting such a prohibited contribution. 2 U.S.C. § 441b(a).

Prior to June, 1990, the Commission's regulations included within the definition of "contribution" extensions of credit to political committees if the extensions were for a "period of time beyond normal business or trade practice unless the creditor . . . made a commercially reasonable attempt to collect the debt." Former 11 C.F.R. § 100.7(a)(4). Corporations were permitted to extend such credit if it were done in the corporation's ordinary course of business "and the terms [were] substantially similar to extensions made to non-political debtors which [were] of similar risk and size of obligation." Former 11 C.F.R. § 114.10.

These earlier regulations at Section 100.7 focused in large part upon the duration of extensions of credit. The Commission's revision of this section, which went into effect on June 27, 1990, went beyond the earlier emphasis upon timing to broader emphases upon the "ordinary course of business" and upon comparisons with treatment of non-political clients like those set out at former 11 C.F.R. § 114.10. Present 11 C.F.R. § 100.7(a)(4).

Further, the new regulations incorporated former Section 114.10 into a new 11 C.F.R. § 116.3. This new provision permits both unincorporated and incorporated commercial vendors to extend credit, provided that this is done "in the ordinary course of the

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corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." 11 C.F.R. § 116.3(a) and (b). This new section also spells out the following factors to be considered in the Commission's analysis of whether a vendor has extended credit in its "ordinary course of business": (1) whether the vendor followed its own established procedures and past practice; (2) whether the vendor had received prompt and full payment in the past from the same candidate or committee; and (3) "[w]hether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry." 11 C.F.R. § 116.3(c)

## 2. RCC/Vendors vs. NSPAC/Vendors

### a. Terms of Contracts

On April 7, NSPAC signed a 5-year contract with Response Dynamics, as "the Agency," for carrying out a direct response fundraising program. The contract, which appears to have been the vendor's then standard, printed agreement, stated that: Response Dynamics would provide all layouts and copy for a NSPAC direct mail program; coordinate and develop the program; make arrangements with advertising media; and "negotiate and enter into agreements on behalf of the Client for any special material and talent required and for all photography, models, special effects, layouts, artwork, printing and any necessary technical material for use in the direct response fundraising and advertising program." Response Dynamics was given the authority to select all vendors of such materials and services.

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The contract further provided that Response Dynamics was to be reimbursed for all advertising costs and expenditures and for "the costs of packaging, shipping, taxes and duties, and telephone calls and telegrams incurred in connection with the performance of the Agreement." The company's compensation was to be \$50 for each thousand fundraising packages processed for mailing, 25% of the costs of telephone solicitations, \$2.00 per name for individually typed mailings to donors of \$50 or more, and commissions of 20% of the standard list rental charges and/or exchanges made directly to organizations and of 40% of list rentals made to brokers or agencies. The Best Lists was designated as an agent of Response Dynamics for the last purpose. The contract also provided for a yearly cost of living increase.

All solicitation returns were to be sent to "an independent third party" (Washington Intelligence Bureau) which would tabulate all returns, deposit the contributions into an "Escrow Fund," and make disbursements to the "direct mail suppliers" for bills outstanding before funds were transferred to NSPAC. The approvals of Response Dynamics and NSPAC were required for such disbursements. List rental receipts and commissions were to be placed in a separate bank account for use in paying commissions and list rental fees.

The contract provided that Response Dynamics was to render periodic billings which were to be paid "no later than on the due date stated therein." If invoices from Response Dynamics or Best Lists were thirty days or more past due, Response Dynamics was

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authorized to have list rental income applied to those invoices. The agreement also contained the provision that "if invoices due a creditor(s) for services provided under this Agreement (including the Agency), remains [sic] unpaid ninety (90) or more days past the original invoice date, the Agency shall have the right to direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency for the purpose of tabulation, deposit and disbursement to the creditor(s)." Disbursements from the Escrow Account would be per the signature of an Agency representative. Further, the agreement stated that "any funds advanced by the Agency for postage, telephone vendors and other direct response fund raising services or materials shall be immediately reimbursed the Agency before any returns are disbursed to the [committee] and/or other parties."

In recognition of costs to be incurred by Response Dynamics in developing the program, NSPAC agreed to pay the company \$25,000 as liquidated damages for termination of the agreement prior to its expiration date. Upon termination of the agreement, all property and material produced by Response Dynamics was to be considered its property until final payment was made. NSPAC acknowledged the ownership by Response Dynamics of layouts, copy and artwork, and its co-ownership of any and all lists created pursuant to the agreement. Response Dynamics was to be entitled to unlimited use of such lists during and subsequent to the agreement, with no "payment of any nature whatsoever by the Agency to the Client."



On November 7, 1989, prior to its registration with the Commission on December 5 of that year, the RCC entered into a two-year contract with Response Dynamics, Inc. for fundraising services. The contract appears to have been based on the same standard form as the NSPAC contract; however, the RCC negotiated the deletion of the apparently otherwise standard provisions regarding the receipt by Response Dynamics of any list rental commissions, co-ownership of any lists generated, and unlimited use of such lists by the vendor. Otherwise, compensation of the vendor was to be upon the same bases as those in the NSPAC contract, namely \$50.00 per one thousand fundraising packages processed, 25% of telephone solicitation costs, and \$2.00 per name for individually typed mailings to high dollar (\$50 or above) donors. The standard cost of living provision was eliminated.

As in the NSPAC contract, Response Dynamics was to render periodic billings to the RCC, which were to be paid by the due date on the invoice. Unlike the NSPAC contract, however, there was no provision for access to list rental income as an alternative source of payment. The agreement did include a provision contract that, in the event of invoices being overdue by ninety or more days, RDI could direct all future returns to an escrow account to which it would have access.

The amount of \$25,000 in liquidated damages for early termination appeared in the RCC contract, as did the provision that upon termination all property and material would become that of the company until all payments were made by the committee. The

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company was to have sole ownership of all copy, layouts and artwork.

**b. Execution - Debts Incurred and Payments Made**

Between January 1, 1990 and June 30, 1992 the pattern of debts incurred by the RCC, payments made and net debt outstanding as regards the seven vendor respondents in comparison with other vendors was as follows:

Month	New Debt Owed Seven	Payments To Seven	Net Debt Owed Seven	New Debt Owed Others	Payments To Others	Net Debt Owed Others
1/1-31/90				\$1,000	\$ -0-	\$ 1,000
2/1-28/90	\$18,606	-0-	\$18,606	4,073	-0-	5,073
3/1-31/90	4,903	16,098	6,930	1,707	1,135	5,646
4/1-30/90	48,797	3,984	51,743	7,100	2,938	9,808
5/1-31/90	23,324	12,912	62,156	9,963	2,200	17,571
6/1-30/90	4,859	15,468	51,546	1,941	2,783	16,729
7/1-31/90	71,695	9,612	113,629	6,403	6,802	16,330
8/1-31/90	67,542	57,756	123,415	800	8,342	8,788
9/1-30/90	27,479	48,287	102,606	5,833	988	13,634
10/1-17/90	14,683	14,414	102,875	268	-0-	13,902
11/26/90	1,632	26,673	77,834	1,240	3,974	8,918
11/27-						
12/31/90	27,603	12,755	92,682	2,608	1,317	10,209
1/1-31/91	15,929	18,214	90,397	1,859	2,500	9,569
2/1-28/91	18,312	21,655	87,054	953	-0-	10,523
3/1-31/91	9,297	10,274	86,077	1,101	1,552	10,072
4/1-30/91	5,724	10,314	81,487	289	101	10,260
5/1-31/91	3,718	-0-	85,206	1,130	724	10,666
6/1-30/91	9,575	6,266	88,516	325	2,054	8,937
7/1-31/91	13,626	16,105	84,327	3,901	-0-	12,839
8/1-31/91	12,434	8,504	89,966	792	-0-	13,631
9/1-30/91	8,523	9,189	89,300	631	3,684	10,578
10/1-31/91	3,292	1,215	91,377	585	280	10,883
11/1-30/91	85	-0-	91,463	211	-0-	11,095
12/1-31/91	485	-0-	91,949	636	-0-	11,731
1/1-31/92	1,058	-0-	93,000	1,715 <sup>3</sup>	-0-	13,446
2/1-29/92	824	-0-	93,824	136	-0-	13,582
3/1-31/92	1,385	-0-	94,209	48	300	13,330
4/1-30/92	-0-	-0-	94,209	-0-	-0-	13,330
5/1-31/92	818	-0-	95,027	108	-0-	13,438
6/1-30/92	-0-	-0-	95,027	-0-	364	13,074

3. This amount was owed Miller/Roos.

During 1990 the RCC reported new debts owed the seven vendors totaling \$311,123. Payments that year totaled \$217,959 for a payment rate of 70%. At the end of the year \$92,682 was owed these seven vendors. In the same year new debts owed for services rendered by other vendors totaled \$42,936 and payments totaled \$30,479, for payment rate of 71%.

New debt accumulated in 1991 as owed to the seven vendors totaled \$101,000; when added to the amount carried over from 1990 debts totaled \$193,682. Payments totaled \$101,736 for a payment rate of 53%. New debt owed other vendors that year came to \$12,413. A total of \$10,209 in debts owed these latter vendors had been carried over from 1990, bringing total debt in 1991 to \$22,622. Payments equaled \$10,895, for a payment rate of 48%.

At the end of the contract period in October, 1991, the RCC's total debts owed all vendors stood at \$102,260. Of this figure \$91,377 was owed the seven vendors. This included:

American Telephone Marketing Group	-	\$20,955.00
Response Dynamics	-	16,648.10
The Best Lists	-	2,455.62
Mid-America Printing	-	8,785.18
American Graphics Design	-	4,797.00
Fulfillment Management	-	18,224.37
Direct Response Data	-	<u>19,512.68</u>

\$91,377.95

By June, 1992 the amount owed the seven vendors had risen to \$95,027, or by only \$3,890, a figure which would appear to indicate that no significant new projects were undertaken after October, 1991. Their respective shares were:

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American Telephone Marketing Group	-	\$20,955.00
Response Dynamics	-	16,694.35
The Best Lists	-	3,219.62
Mid-America Printing	-	8,785.18
American Graphic Design	-	4,797.00
Fulfillment Management Service	-	18,298.87
Direct Response Data Management	-	<u>22,277.75</u>
Total	-	\$95,027.77

The amounts owed other vendors totaled \$13,075.33. No payments were made to any of these vendors in 1992 or 1993; thus, as of November, 1993, all of the debts remained unchanged.

c. Response to Complaints

The RCC contends that the debts owed by the RCC to the seven vendors "were incurred as a result of an arms length business transaction and, notwithstanding various attempts to secure revenues from fundraising efforts, funds have not been obtained by which to pay off the RCC debts." Counsel states that the RCC was formed to support non-incumbent Republican candidates for the U.S. Senate and House of Representatives. Although the RCC believed that this message "would be very attractive to potential Republican contributors," it was seen as a failure after several months. "[T]he revenues were not generated to cover expenses and little if any funds were used for purposes other than direct mail costs."<sup>4</sup>

The RCC asserts that the standard by which the contract should be judged is whether it was an arms length transaction at the time it was executed, not whether the contract resulted in a

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4. The RCC reported only \$4,000 in direct contributions to candidates in 1990, no direct contributions in subsequent years, and no independent expenditures.

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successful fundraising project. Respondents argue that it was the Commission's former regulations which were in effect in November, 1989 when the agreement was signed, and that it is those regulations which should be applied in the present matter.

Relying entirely upon the terms of the pre-1990 regulations, the RCC asserts that the agreement was "made in the ordinary course of RDI's business and on terms which were substantially similar to other RDI agreements made with not only other political committees but non-political entities." It is further asserted that the amendments requested by RCC involved issues "which would not have impacted upon the present debt situation of the Committee," and that they "were not items detrimental to the business activities of RDI." Finally, the committee argues that the RCC had no control over whether the vendors took sufficient steps to collect the debts. "The issue of the size of the debt and the attempts by RDI to collect it are irrelevant to the issues involving RCC." Collection effort would be a consideration only if the RCC sought debt settlement approval.

#### d. Analysis

As outlined above, the Commission's revised regulations governing extensions of credit became effective as of June 27, 1990, thus changing somewhat for the post-June, 1990 period the factors to be considered by the Commission in determining whether or not a credit extension to a political committee results in a corporate or excessive contribution. Guidance as to standards is also to be found in advisory opinions which were issued both

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before and after June 27, 1990, as well as in matters under review on the public record as of that date and later.

i. Pre-June 27, 1990

(a). Standards to be applied

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The Commission regulations in force until mid-June, 1990 required anyone extending credit to a political committee to do so for no greater length of time than was normal business or trade practice, unless that person had made commercially reasonable attempts to collect. Otherwise, a contribution would result. (Former 11 C.F.R. § 100.7(a)(4)). These earlier regulations governing corporate activity also required that commercial vendors extend credit only in the ordinary course of business and on terms similar to those extended non-political clients. (Former C.F.R. § 114.10.) Pre-June, 1990 advisory opinions which addressed extensions of credit for direct-mail fundraising and telephone solicitations determined that so long as such extensions for start-up costs were normal industry practice and ordinarily extended by the particular vendor involved, they would not be considered contributions. However, by late 1989 the Commission was also emphasizing that agreements between vendors and political committees should have built-in safeguards of the vendors' financial interests. (AO 1989-21). This concern was restated in AO 1990-1 issued on March 1, 1990.

(b). Application to RCC and Companies

(1). Relevance of NSPAC Contract Experience

Knowledge derived from prior dealings with a customer was not listed specifically in the regulations as a component of "ordinary

course of business" until the revision of those regulations in June, 1990. Nevertheless, prior to that date such knowledge would have been relevant to a vendor's decisions regarding whether or not to extend credit.

The RCC registered as a political committee with the Commission on December 5, 1989. The complainant in MUR 3638 asserts that certain individuals on the board of directors of the RCC in large part were the same as those on the NSPAC board of directors. The chairman of the RCC, Floyd G. Brown, was active as a consultant with NSPAC in 1988. The principal vendors selected to serve the RCC beginning in 1990 were the same as those against which high levels of debt had been accumulated by NSPAC during the period immediately preceding the RCC contract. Thus, as to the RCC activity between December, 1989 and June 27, 1990, it is appropriate to examine whether the solicitation failures of the earlier organization in late 1988 and 1989 should have served as warnings to the respondent vendors with regard to their dealings with the RCC and, more fundamentally, to compare the provisions of the contracts entered into by the two committees.

(2). NSPAC failure

The principal activities undertaken by NSPAC after its creation in 1986 were its independent expenditure program on behalf of the presidential campaign of George Bush in 1988, plus, to a lesser extent, programs in support of at least seven candidates for the U.S. Senate in the same 1987-88 cycle; its

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fundraising expenditures in 1989 and 1990 were for the most part reported as being on behalf of the 1988 Bush campaign. The RCC, on the other hand, was created to assist the senatorial campaigns of Republican candidates in 1990. The \$4,000 which the RCC contributed went to 1990 U.S. Senate candidates, not to the Bush campaign or to other 1988 candidates.

Thus, there were differences in the candidates in support of whom NSPAC and the RCC solicited contributions, with possible implications for RCC optimism in early 1990 despite NSPAC's then recent failures. Nevertheless, given the apparent overlaps in leadership between NSPAC and the RCC, considerations as to the creditworthiness of the RCC should have included the fundraising difficulties which NSPAC, under that leadership, had begun to suffer in late 1988. These difficulties continued into 1989 and 1990, compounded by new, but unsuccessful, attempts to raise sufficient funds in January and February, September and December, 1989 and in January and February, 1990 to meet NSPAC debts. The RCC began its solicitations in January or February, 1990; at that time NSPA was carrying over \$1,000,000 in debt owed to the seven vendors, as it had for the past year. Any creditor still involved with NSPAC would have had ample reason to question whether its "ordinary" course of business should include granting credit for the new RCC.

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(3). The Contracts

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The written agreement between Response Dynamics and the RCC designated the former as the committee's agent in its relationship with other vendors. It is not clear whether separate agreements were negotiated with others of the seven vendors, even though all had come into existence by November, 1989. The RCC agreement provided for payment of vendors upon submission of invoices, with payment to come from an Escrow Fund consisting of funds received in response to solicitations. No advance payments to vendors were required. Suppliers had first call upon monies received, although, again as with the NSPAC contract, it is not clear whether this applied to all vendors or just the seven respondents. Further, if invoices were unpaid for longer than ninety days, Response Dynamics could direct all future receipts into an Escrow Account which it would designate and against which its representative could make disbursements.

These RCC contract provisions appear to have been ones contained in Response Dynamics' standard contract and to have been designed to accord the vendors some measure of financial protection. On the other hand, this contract was not nearly as advantageous to the vendors as the one signed with NSPAC in that, as stated above, RCC negotiated the deletion of a number of provisions which would have given Response Dynamics rights to income from list rentals as well as to co-ownership and use of any

list developed as a result of the contract. It also negotiated out the standard cost of living increase provision.

With regard to the contract between the RCC and Response Dynamics and its pre-June 20, 1990 implementation, the principal issue is whether the compensation provisions of the contract as negotiated were in fact in the ordinary course of the vendor's business. The RCC does not indicate that it was ordinary business practice for Response Dynamics to agree to the kinds of significant changes in its standard contract as those accepted in the contract with the RCC. Rather, it is argued generally that these amendments would not have had an impact upon the debts owed the vendors by his client, and that these contract deletions were not detrimental to the vendors' business activities.

ii. Post-June 27, 1990

(a). Standards to be Applied

The Commission's revised regulations with regard to both corporate and non-corporate commercial vendors require that credit be extended only in the ordinary course of the creditor's business on terms "substantially similar" to those of extensions to non-political debtors. 11 C.F.R. § 116.3(a) and (b). Creditors must make "commercially reasonable" attempts to collect. 11 C.F.R. § 100.7(a)(4). "Ordinary course of business" is expressly defined to include the vendor's own procedures and past practice, prior experience with the particular debtor, and normal industry practice. 11 C.F.R. § 116.3(c).

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Advisory opinions concerning fundraising contracts issued by the Commission after June, 1990 and before the end of NSPAC activity in mid-1991 placed even more emphasis than earlier ones upon the importance of advance payments to vendors and upon assurances that the vendors would not be left bearing most of the risk of a fundraising project. (AO 1990-14 and AO 1990-19).

(b). Application to RCC and Companies

As can be seen on the monthly summary of RCC debt at pages 47-48, the amount of new debt owed the seven vendors by the RCC jumped several fold in July and August, 1990, with net debt owed more than doubling by the end of July from \$51,546 to \$113,629. It appears that a new, larger round of solicitations took place at that time, presumably in order to collect funds to pay the vendors.

As of mid-1990 no contributions to candidates had been made by the RCC. Nor does it appear that non-respondent vendors were being favored in terms of payments. Thus, the issue is whether it was in the ordinary course of the vendors' own business to extend more credit in order to recoup earlier losses, whether such extensions are normal in the direct mail and telemarketing industries, and whether the vendors' earlier experience with the RCC should have signaled more caution. Given the information presently available, it appears that the prior experience of the respondent vendors under the RCC contract should have been enough to render highly questionable further extensions of credit after June, 1990.

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There is reason to believe that the RCC has violated 2 U.S.C. § 441b(a) by accepting extensions of credit outside the ordinary course of business.

2. Affiliation; Excessive Contributions

2 U.S.C. § 433(b)(2) requires that statements of organization filed by political committee include the names and other information pertaining to committees affiliated with the reporting committee. 11 C.F.R. § 100.5(g)(2) defines "affiliated committee" to include, inter alia, all committees "established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons . . . ."

Pursuant to 2 U.S.C. § 441a(a)(5), "all contributions made by political committees established or financed or maintained or controlled by any . . . person, or by any group of such persons, shall be considered to have been made by a single political committee." See also 11 C.F.R. § 100.5(g)(3)(v). Pursuant to 11 C.F.R. § 110.3(a), "all contributions made or received by more than one affiliated committee . . . shall be considered to be made or received by a single political committee. 2 U.S.C.

§ 441a(a)(1)(C) limits to \$5,000 the amount which any person may contribute to a political committee in any calendar year, while 2 U.S.C. § 441a(f) prohibits committees from accepting excessive contributions. 2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the contributions which any multicandidate committee may contribute to a candidate with respect to any federal election.

Factors to be considered by the Commission in determining whether there is evidence that one committee has been established,

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financed, maintained or controlled by another committee, resulting in affiliation, include, but are not limited to,

1. Whether a sponsoring organization owns a controlling interest in another organization sponsoring a political committee;
2. Whether a committee is able "to direct or participate in the governance of another . . . committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures";
3. Whether a committee "has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another . . . committee";
4. Whether a committee "has a common or overlapping membership with another . . . committee which indicates a formal or ongoing relationship between the . . . committees";
5. Whether a committee "has common officers or employees with another . . . committee which indicates a formal or ongoing relationship between the . . . committees";
6. Whether a committee "has any members, officers or employees who were members, offices or employees or another . . . committee which indicates a formal or ongoing relationship between . . . the committees, or which indicates the creation of a successor entity";
7. Whether a committee "provides funds or goods in a significant amount or on an ongoing basis to another . . . committee . . .";
8. Whether a committee "causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another . . . committee";
9. Whether a committee or its agent "had an active or significant role in the formation of another . . . committee"; and
10. Whether the committees "have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the . . . committees."

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a. PVC and RCC

The complaint in MUR 3578 alleges that the PVC and the RCC "were established, and are financed, maintained or controlled by the same person or group of persons and are thereby affiliated." In support of this allegation, the complainant asserts the following:

1. Both committees employ Floyd Brown "in an executive capacity." Mr. Brown is both founder and chairman of PVC and is chairman of RCC. Robert E. Miller, Jr., serves as treasurer of both committees.
2. The two committees until recently shared the same depository, namely The George Mason Bank of Fairfax, Virginia, and that a caller had been informed by the PVC that contributions to both committees could be made by using a single check.
3. The two committees share seven common vendors.

In his response on behalf of the RCC in MUR 3578 and in his sworn affidavit in the same matter Floyd Brown states that he is the "Chairman of Presidential Victory Committee" and the chairman of the RCC. In addition, Robert E. Miller was the treasurer of the RCC at the time he was named treasurer of the PVC.

Mr. Brown asserts that the RCC . . . is no longer operational as a political committee, that it was not operational with respect to the 1992 election cycle, and that it has not been operational for many months (beginning well before the formation of PVC) except with respect to efforts to retire the debt it has accrued. "In my opinion, there is no affiliation between PVC and RCC. They are completely different committees formed in different time periods for different purposes, and RCC has not been operational in the 1992 election cycle."

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While the RCC made a total of \$4,000 in contributions in October and November, 1990, to six candidates for the U.S. Senate: Hank Brown, Hal Daub, Jim Rappaport, James Tauke, Lynn Martin and Pat Saiki, and to one Congressional candidate, Robert Williams, no additional direct contributions have been reported since that time, and thus none were apparently made in 1992. Nor have any independent expenditures been reported by the RCC.

In 1992 the PVC made a total of \$7,750 in contributions to nine candidates for the Senate and the U.S. House of Representatives; the recipients included the authorized committees of Bruce Herschensohn, Duane Sommers, Pam Roach, Mark Siljander, Tim Hutchinson, James Lacey, Tom Scott, William Dannemeyer and Enid Greene. The PVC's 1992 disbursements also included \$2,060,810.97 in independent expenditures on behalf of "George Bush for President."

It is clear that the RCC and the PVC were founded and have been directed by the same individual(s), thus meeting, at the least, the requirements of 11 C.F.R. § 100.5(g)(4)(ii)(E) (common officers or employees) and (I) (significant role by one in formation of second). There is reason to believe that the RCC and the PVC violated 2 U.S.C. § 433(b)(2) by not reporting each other as affiliated committees.<sup>5</sup>

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5. The complaint in MUR 3578 cites 11 C.F.R. § 102.2(b) as a provision violated by the RCC and the PVC. This regulatory provisions defines "affiliated committee" and thus is not one which is subject to violation.

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b. NSPAC and RCC

Neither complaint directly alleges the affiliation of NSPAC and the RCC. Nevertheless, the statement in the article from the National Journal attached to the complaint in MUR 3638 concerning the overlapping of members of the committees' respective boards of directors and consultants has raised questions as to the role of NSPAC in the creation of the RCC and led to an examination of both committees' reports.

Of the factors in the Commission's regulations evidencing affiliation, those at present most clearly relevant to the NSPAC/RCC relationship appear to be the involvement of common officers or employees in two ongoing committees; the past involvement by members, officers or employees of one committee in another committee with the resulting possibility of the "creation of a successor entity"; the active involvement by the agent of one in the formation of the second; and a pattern of overlapping contributors. According to the news article cited above, Floyd G. Brown, a consultant for NSPAC, founded the RCC in late 1989 and has acted as its chairman. Further, most of RCC's board members were allegedly on the board of NSPAC. Thus, whether one considers these committees to be contemporaries or predecessor/successor, their apparently shared personnel bring them within the above affiliation factors.

An examination of direct contributions made by NSPAC and the RCC in 1990 shows that each contributed to at least two of the same federal candidates, Jim Rappoport and Pat Saiki. More revealing are the committees' reports of contributions received.

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In 1990 the RCC received contributions from 70 individuals. Of these contributors at least 21, or almost one-third, were also reported as having made contributions to NSPAC either during that same year or in 1989.

There is reason to believe that the RCC violated 2 U.S.C. § 433(b)(2) by not reporting NSPAC as an affiliated committee.

Again, with affiliation NSPAC and RCC would have shared both contribution and receipt limitations pursuant to 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 110.3. NSPAC attained multicandidate status on October 24, 1986, while RCC qualified on June 18, 1990. As a committee affiliated with NSPAC, RCC would in fact have shared the older committee's multicandidate status at its inception in December, 1989. Thus, throughout 1990 the two committees were limited to an aggregation of \$5,000 in contributions per election to candidate committees and were permitted to receive a combined total of \$5,000 from individual contributors.

At present, as stated above, the two shared recipients which have been identified are Pat Saiki and Jim Rappoport. The committees' combined contributions to these candidates did not exceed \$5,000 per election. It does appear, however, that combined receipts from at least one of the 21 shared contributors exceeded \$5,000. These excessive contributions were as follows:

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	<u>NSPAC</u>	<u>RCC</u>
Roy W. Arledge	5/25/90 - \$ 200	2/26/90 - \$ 250
	7/3/90 - 200	5/7/90 - 300
	8/6/90 - 300	6/18/90 - 400
	8/17/90 - 300	6/29/90 - 500
	10/16/90 - 500	7/16/90 - 200
	\$1,500	8/2/90 - 200
		8/7/90 - 750
		8/15/90 - 500
		8/16/90 - 200
		8/20/90 - 1,000
		8/23/90 - 250
		9/20/90 - 200
		10/10/90 - 200
		10/31/90 - 2,000
		\$6,950

Thus, there is reason to believe that the RCC violated 2 U.S.C.  
§ 441a(f) by accepting contributions in excess of \$5,000.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OCTOBER 3, 1994

Russell W. Sullivan, Esquire  
Vinson & Elkins  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1008

RE: MUR 3578/3638  
Mrs. Wesley West

Dear Mr. Sullivan:

On September 27, 1994 the Federal Election Commission found reason to believe that your client, Mrs. Wesley West, violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act.") by making excessive contributions totaling \$15,000 to the Presidential Victory Committee in 1992. After considering the circumstances of this matter, the Commission also determined to take no further action and closed its file as it pertains to Mrs. West. The portion of the First General Counsel's Report which pertains to your client is enclosed.

The Commission reminds your client that her contributions to the Presidential Victory Committee during the 1992 calendar year appear to have been in violation of the Act. She should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions at 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all remaining respondents in this matter.

If you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

For the Commission,

A handwritten signature in black ink, which appears to read "Trevor Potter", is written over a horizontal line.

Trevor Potter  
Chairman

Enclosure

First General Counsel's Report (relevant portion)

960437134C



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 20, 1994

David A. Kunko, Chairman  
Response Dynamics, Inc.  
2070 Chain Bridge Road  
Suite 400  
Vienna, VA 22182

RE: MUR 36<sup>28</sup>

Dear Mr. Kunko:

I am writing with reference to our telephone conversation a week or so ago and to the arrangements which we made for a meeting at your office next Wednesday, October 26., 1994, to discuss the Commission's discovery requests in the above-cited matter. Upon further reflection, I think there are some issues in need of clarification.

First, when you called me I did not have the case file at hand, and thus did not focus on the fact that you have designated counsel to represent your companies in this enforcement matter. So long as this designation is in effect, it is inappropriate for a representative of the Office of the General Counsel, including myself, to talk with you directly without the consent of counsel. Accordingly, if you remain interested in meeting next Wednesday, your counsel should request this meeting in writing. Following the making of such a request we can then clarify what such a meeting could accomplish. Even if such a meeting were to take place, it would not obviate the need for compliance with the Commission's subpoena and order.

We remind you that, according to our calculations, your responses to the Commission's subpoena and order are due on or about November 7, 1994. Thus, we suggest that your counsel immediately submit a request for an extension of time in which to respond to all of the discovery requests sent to your companies. Although we recognize the complexities that have arisen, we wish to emphasize that we do not want this matter to be delayed inordinately.

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David A. Kunko, President  
Response Dynamics, Inc.  
Page 2

I will be out of the office tomorrow, October 21, but will be in next Monday. Should your counsel be unable to discuss this matter today, the person to contact tomorrow would be Abigail Shaine, Assistant General Counsel, at (202) 219-3400.

Sincerely,



Anne A. Weissenborn  
Senior Attorney

cc: William H. Schweitzer, Esquire  
E. Mark Braden, Esquire

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**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

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ADMINISTRATIVE

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304  
FAX (202) 861-1783 • TELEX 2357276  
WRITER'S DIRECT DIAL NUMBER (202) 861-1504

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October 21, 1994

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OFFICE OF GENERAL  
COUNSEL

Anna A. Wisenborn, Esquire  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

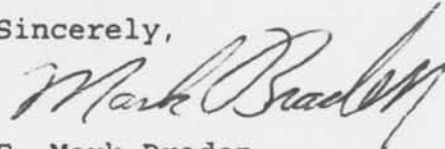
Re: Response Dynamics, MUR 3638

Dear Ms. Wisenborn:

My client desires to resolve this matter in the most expeditious manner possible, but the number and scope of the Commission's request and its proximity to the election makes a response by November 7th impracticable, if not impossible. For this reason, we are requesting an additional thirty (30) days from November 7th in which to respond to the Commission's request.

Thank you for your consideration.

Sincerely,



E. Mark Braden

EMB/bss

9604371343



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 25, 1994

E. Mark Braden, Esquire  
Baker & Hostetler  
Washington Square, Suite 1100  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5304

RE: MUR 3638  
Response Dynamics, Inc.,  
et al.

Dear Mr. Braden:

This is in response to your letter dated October 21, 1994, which we received on October 24, 1994, requesting an extension of thirty days to respond to the Commission's reason to believe determinations and subpoena and order. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on December 7, 1994.

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

Sincerely,

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

Anne A. Weissenborn  
Senior Attorney

960437134

WILLIAM J. OLSON, P.C.

ATTORNEYS AT LAW

8180 GREENSBORO DRIVE, SUITE 1070  
MCLEAN, VIRGINIA 22102-3823

TELEPHONE (703) 356-5070

FAX (703) 356-5055

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1815 H STREET, N.W.  
SUITE 800  
WASHINGTON, D.C. 20006-3604  
TELEPHONE (202) 823-9088  
FAX (202) 331-8986

WILLIAM J. OLSON  
(D.C., VA.)  
JOHN S. MILES  
(D.C., MD., OF COUNSEL)  
GILMAN & PANGIA  
(OF COUNSEL)

November 4, 1994

Federal Express

Anne A. Weissenborn, Esquire  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Presidential Victory Committee,  
Robert E. Miller, Jr.,  
Treasurer, et al.; MUR 3638

Nov 7 12 17 PM '94

RECEIVED  
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COMMISSION  
OFFICE OF GENERAL  
COUNSEL


Dear Ms. Weissenborn:

This firm represents Presidential Victory Committee ("PVC") and Robert E. Miller, Jr., as Treasurer of PVC (collectively referred to herein as "PVC Respondents"), in the above-referenced matter. By letter dated October 3, 1994, received by this office on October 6, 1994, you indicated that the Federal Election Commission ("FEC") had found reason to believe that the PVC Respondents may have violated the Federal Election Campaign Act of 1971 ("FECA"), and you invited their response within 30 days of receipt of your letter, which is also the due date for responding to the interrogatories and document request submitted with your letter.

Although we have been working diligently with the respondents to answer the matters on which you seek further information, we are in need of additional time to submit the response and would respectfully request an extension of time of two weeks within which to submit it. It is our understanding, if you grant this request, that the response would be due on or before November 20, 1994.

We would appreciate your acknowledgement of this request and your favorable action, and we thank you for your consideration.

Sincerely yours,

  
William J. Olson

WJO:mm

cc: PVC Respondents

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 9, 1994

William J. Olson, Esquire  
8180 Greensboro Drive, Suite 1070  
McLean, Virginia 22102-3823

RE: MUR 3638  
Presidential Victory Committee  
Robert E. Miller, Jr.,  
Treasurer

Dear Mr. Olson:

This is in response to your letter dated November 4, 1994, which we received on November 7, 1994, requesting an extension of two weeks to respond to the Commission's reason to believe determinations and discovery requests.

The Chairman's letter of October 3, 1994, which notified your clients of the Commission's findings of reason to believe and which enclosed a subpoena and order, contained the requirement that any request for an extension of time to respond be submitted at least five days prior to the due date of the response. Your request was submitted after the prescribed time. However, in light of the extent of the discovery requests involved in this matter, the Office of the General Counsel has granted the requested extension. No additional extensions will be granted. Your clients' response is thus due by the close of business on November 20, 1994.

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

Sincerely,

A handwritten signature in cursive script, which appears to read "Anne A. Weissenborn", is written above the typed name.

Anne A. Weissenborn  
Senior Attorney

9604371346



96043171347

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

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

November 8, 1994

Anne A. Weissenborn, Esquire  
Federal Election Commission  
General Counsel's Office  
999 E Street, NW  
Washington, D.C. 20463

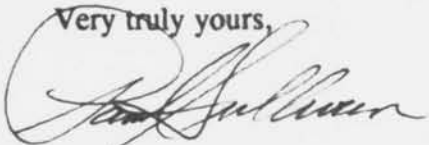
RE: MUR 3638  
Republican Challengers Committee

Dear Ms. Weissenborn:

This is a letter in follow-up to our conversation regarding a request for an extension of time in the above referenced matter for production of documents in accordance with the subpoena issued by the Commission on October 3, 1994. I presently have the documents and am reviewing them with representatives of the respondent. However, I am due to be out of my office from Wednesday, November 9, 1994 through Thursday, November 17, 1994. It will not be possible for me to work with my client on this matter during that period. Therefore, I would request your authorization to provide the documentation and response to interrogatories to your office no later than Wednesday, November 23, 1994.

Thank you for your attention to this matter.

Very truly yours,



Paul E. Sullivan

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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**Paul E. Sullivan, Esq.**  
*Attorney-at-Law*

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

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Anne A. Weissenborn, Esquire  
Federal Election Commission  
General Counsel's Office  
999 E Street, NW  
Washington, D.C. 20463

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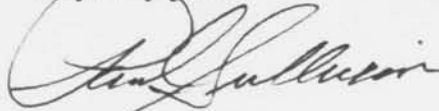
RE: MUR 3638  
National Security Political Action Committee

Dear Ms. Weissenborn:

This is a letter in follow-up to our conversation regarding a request for an extension of time in the above referenced matter for production of documents in accordance with the subpoena issued by the Commission on October 3, 1994. I presently have the documents and am reviewing them with representatives of the respondent. However, I am due to be out of my office from Wednesday, November 9, 1994 through Thursday, November 17, 1994. It will not be possible for me to work with my client on this matter during that period. Therefore, I would request your authorization to provide the documentation and response to interrogatories to your office no later than Wednesday, November 23, 1994.

Thank you for your attention to this matter.

Very truly yours,



Paul E. Sullivan

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

November 10, 1994

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Washington, DC 20005

RE: MUR 3638  
Republican Challengers  
Committee  
Robert E. Miller, Jr.,  
as treasurer

Dear Mr. Sullivan:

This is in response to your letter dated November 8, 1994, which we received on November 9, 1994, requesting an extension of time until November 23 to respond to the Commission's reason to believe determinations and discovery requests.

The Chairman's letter of October 3, 1994, which notified your clients of the Commission's findings of reason to believe and which enclosed a subpoena and order, contained the requirement that any request for an extension of time to respond be submitted at least five days prior to the due date of the response. Your request was submitted after the prescribed time. However, in light of the extent of the discovery requests involved in this matter, the Office of the General Counsel has granted the requested extension. No additional extensions will be granted. Your clients' response is thus due by the close of business on November 23, 1994.

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

Sincerely,

Anne A. Weissenborn  
Senior Attorney

9604371319



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 15, 1994

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Washington, DC 20005

RE: MUR 3638  
National Security Political  
Action Committee  
Elizabeth I. Feday,  
as treasurer

Dear Mr. Sullivan:

This is in response to your letter dated November 8, 1994, which we received on November 10, 1994, requesting an extension of time until November 23 to respond to the Commission's reason to believe determinations and discovery requests.

The Chairman's letter of October 3, 1994, which notified your clients of the Commission's findings of reason to believe and which enclosed a subpoena and order, contained the requirement that any request for an extension of time to respond be submitted at least five days prior to the due date of the response. Your request was submitted after the prescribed time. However, in light of the extent of the discovery requests involved in this matter, the Office of the General Counsel has granted the requested extension. No additional extensions will be granted. Your clients' response is thus due by the close of business on November 23, 1994.

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

Sincerely,

A handwritten signature in cursive script, which appears to read "Anne A. Weissenborn", is written above the typed name.

Anne A. Weissenborn  
Senior Attorney

9604371350

WILLIAM J. OLSON, P.C.

ATTORNEYS AT LAW

8180 GREENSBORO DRIVE, SUITE 1070  
MCLEAN, VIRGINIA 22102-3823

TELEPHONE (703) 356-5070

FAX (703) 356-5085

WILLIAM J. OLSON  
(DC, VA)

JOHN S. MILES  
(DC, MD, OF COUNSEL)  
GILMAN & PANGIA  
(OF COUNSEL)

1815 H STREET, N.W.  
SUITE 800  
WASHINGTON, D.C. 20006-3604  
TELEPHONE (202) 223-9088  
FAX (202) 331-8988

November 21, 1994

HAND DELIVER

Trevor Potter, Chairman  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Attention: Anne A. Weissenborn, Esquire  
Assistant General Counsel

Re: Presidential Victory Committee,  
Robert E. Miller, Jr.,  
Treasurer, et al.; MUR 3638

Dear Sir:

This firm represents Presidential Victory Committee ("PVC") and Robert E. Miller, Jr., as Treasurer of PVC (collectively referred to herein as "PVC Respondents"), in the above-referenced matter. By letter dated October 3, 1994, received by this office on October 6, 1994, you indicated that the Federal Election Commission ("FEC") had found reason to believe that the PVC Respondents may have violated the Federal Election Campaign Act of 1971 ("FECA"), and you invited their response within 30 days of receipt of your letter, which is also the due date for responding to the interrogatories and document request submitted with your letter. By letter dated November 9, 1994, the response time was extended to November 20, 1994, which, because it was a Sunday, is being responded to today.

We expect, in accordance with the law and your letter of October 3, 1994, that this matter will remain confidential, and we expressly request that it remain confidential.

This matter apparently is the product of two complaints filed with the Commission. The first, designated as MUR 3578, a complaint by the Democratic National Committee, was the subject of the Commission's letters to the PVC Respondents dated August 14, 1992, which were answered by the PVC Respondents in their letter to the Commission dated September 2, 1992. The second, designated as MUR 3638, also a complaint by the Democratic National Committee ("DNC"), was the subject of the Commission's letters to the PVC Respondents dated October 6, 1992, which were

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GENERAL COUNSEL

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answered by the PVC Respondents in their letter to the Commission dated October 27, 1992.

Although you state that the two MUR's referenced above have now been merged into MUR 3638, it is difficult to understand why that was done. As noted in their above-referenced response of October 27, 1992, the complaint in MUR 3638 does not directly accuse the PVC Respondents of any wrongdoing whatsoever. PVC's name was not even included in the caption of the complaint as a target of the DNC's charges, and there are no specific paragraphs of the complaint alleging any violations of the Federal Election Campaign Act, or any other law, by the PVC Respondents. To the extent that the complaint insinuates an affiliation between Republican Challengers Committee ("RCC") and PVC, that would at most merely be repetitious of one of the allegations in the complaint in MUR 3578. In short, we fail to see why the matter is being merged into MUR 3638. In our view, there should be no merger and MUR 3638 clearly should be dismissed as against the PVC Respondents.

Our view is further supported by the absence of evidence to substantiate any reason to believe there was any reportable affiliation between RCC and PVC, and this view is actually supported by the facts recited in the "Factual and Legal Analysis" attached to your "reason to believe" letter of October 3, 1994. Although the letter itself says that the Commission found reason to believe that the PVC Respondents violated 2 U.S.C. sec. 433(b)(2) by not reporting the RCC as an affiliated committee, the Factual and Legal Analysis is devoid of any facts or analysis that would support such a conclusion. In fact, the footnote (#1) on page 7 of the Factual and Legal Analysis actually support the position of the PVC Respondents that there was no affiliation, and thus no violation. With respect to the notion that there may have been technical affiliation within the intendment of section 433(b)(2), there is no evidence whatsoever beyond the undisputed facts concerning the common officers/employees. The fact that the two committees had common officers is only a factor to be considered in determining whether there was a "formal or ongoing" relationship between the two committees. See 11 C.F.R. sec. 100.5(g)(4)(ii)(E). The rest of the facts set forth in the Factual and Legal Analysis support the PVC Respondents' position that, despite some common officers, there was no affiliation. Again, therefore, it is very difficult to understand why the PVC Respondents have been retained in any continuation of MUR 3638.

With respect to the balance of the matters referred to in your letter of October 3, 1994, we would respond as follows. We would request pre-probable cause conciliation with respect to the alleged violation of 2 U.S.C. sec. 441a(f), the facts concerning which have previously been stated and which we believe are undisputed.

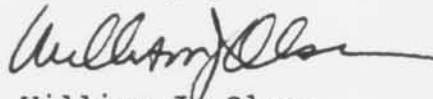
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With respect to the Commission's finding of reason to believe that there was a violation of section 434(c) "by failing to report fully debts incurred in connection with independent expenditure programs," we are somewhat in the dark. To the best of our knowledge, neither MUR 3578 nor MUR 3638 included any allegation with respect to a violation of section 434(c), and we are entirely unfamiliar with that allegation. Having read the Factual and Legal Analysis ("Analysis") presented with your letter, however, we would state that we have looked at the reports of the PVC Respondents and would agree with the statement in the Analysis (p. 11) that most of the expenses "did not apparently involve activities expressly advocating the election or defeat of a candidate." We do not know if all of the expenses fall into this category, or if some should have been reported as independent expenditures as well (or if, in fact, they were so reported). In view of the fact that any such expenses would only have been a small part of the substantial fully-reported independent expenditure, it would appear that, if a reporting error was committed, it was completely inadvertent.

Enclosed are the PVC Respondents' responses to the interrogatories and document requests included with your letter of October 3, 1994.

We will await further word from you on the matters referred to above.

Sincerely yours,



William J. Olson

Enclosure  
WJO:mm

cc: PVC Respondents

ATTACHMENT A

9604371354

Lloyd Gregory Brown

20241-194th Place, Northeast  
Woodinville, Washington 98072  
(206) 788-0462

November 6, 1989

Mr. Ron Kanfer  
Response Dynamics  
2070 Chain Bridge Road, Suite 400  
Vienna, VA 22182

Dear Ron,

I have approved the Republican Challengers Committee prospect letter per the request of David Duncan, but we must get a signed contract before the letter goes in the mail.

Please have a draft contract sent to me as soon as possible. I do not want to mail until we have a signed contract.

The package looks great. I get more excited about the project every day. I think we have a winner.

Sincerely,

*Floyd*

Floyd G. Brown

960437135

September 28, 1989

Via Fax

Memorandum to David Kunko and Ron Kanfer

From: Floyd G. Brown

*Floyd*

RE: Republican Challengers Committee

I am extremely excited about the prospects for this new project. I expect to be talking with Paul Sullivan later today to approve the final filing of the committee.

I expect to have the prospectus completed by the 10th of October. I will fax to you some earlier drafts. I would like you to consider using highly targeted mailings of the prospectus to high dollar donors.

The prospectus will be a very classy piece of art. I would like to produce it with a glossy cover and color photos inside.

The prospectus will include the case for the Republican Challengers Committee. It will include the 1989-90 operating budget, and it will be similar to a project prospectus that is prepared by any corporation. The entire action plan will be outlined.

Once this is mailed to high dollar donors I will follow up the mailings with telephone calls. I would even like to take several fundraising trips to key cities (ie: New York, Boston, Chicago, Dallas, Phoenix and L.A.) this fall. I'm sure a week in each city would pay off nicely in start up dollars.

Please call me if you have any thoughts about the high dollar mailings or any additional fundraising ideas. I'm going to be working on this project full time, so I expect success.

It was a pleasure seeing you last week.

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ATTACHMENT B

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# AGREEMENT

AGREEMENT made November 7, 19 89, between Response Dynamics Inc.,  
(hereinafter called the Agency), Republican Challengers Committee  
(hereinafter called the Client), and Washington Intelligence Bureau  
(hereinafter called the Escrowee).

## WITNESSETH:

WHEREAS, the Agency and the Client have heretofore entered into an Agreement dated Nov. 7, 19 89, pursuant to which the Agency has agreed to provide direct mail fund raising services to the Client and the Client has agreed to pay the costs for said services as well as costs for others providing services and supplies for the direct mail fund raising program, all upon the terms and conditions set forth in the Agreement between the Agency and the Client, and

WHEREAS, the parties desire to execute an Escrow Agreement in accord with the provisions of paragraph 5.c of said Agreement,

IT IS, THEREFORE, agreed:

1. ESCROW FUND. The Agency and the Client hereby agree that returns from the direct mail fund raising programs covered by their Agreements dated Nov. 7, 19 89, shall be received by the Escrowee and the sum so received shall be known as the Escrow Fund.

2. PAYMENT OF CREDITORS. The Escrow Fund shall be held by the Escrowee separate and apart from the other funds of the Escrowee. The Agency and the Client shall mutually present the Escrowee invoices of creditors, including invoices of the Agency, which the Escrowee shall pay from said Escrow Fund.

All invoices paid from said Escrow Fund shall be jointly agreed upon by the Agency and the Client. If any such invoice is disputed, the Escrowee shall continue to hold the sums necessary to pay said disputed invoice in escrow until such time as the claim of debt is resolved by the Agency and the Client.

The Escrowee shall render billings for Escrowee services by the 10th day of each month for services rendered in the preceding month and payment shall be due no later than thirty days from the date of such billing. If payment authorization is not received by the Escrowee for any billings due for Escrowee services by the due date, and such billings are not in dispute, the Escrowee shall be authorized to pay such billings without the authorization of the Client or Agency.

If payment authorization is not received by the Escrowee, within 30 days of invoice date, for any billings due the Agency, and such billings are not in dispute, the Escrowee shall be authorized to pay such billings without written authorization of the Client.

3. DISPUTES. In the event of any dispute with respect to disposition of all or part of the Escrow Fund, the Escrowee shall not be obligated to disburse the disputed portion thereof nor shall the Escrowee be required affirmatively to commence any action against the Agency or the Client or defend any action that a creditor might bring. In his sole discretion, the Escrowee may, in the event of a dispute as to the disposition of all or part of the Escrow Fund, commence an action in a nature of interpleader and seek to deposit the disputed portion in a Court of Competent Jurisdiction.

Any dispute arising from any question involving invoices of the Agency or the Escrowee shall be made in writing within 10 days of receipt of said invoice.

4. OTHER AGREEMENTS. The Escrowee shall not be bound by any agreement between the Agency and the Client of which he has no knowledge as of the date of this Escrow Agreement. Nor shall he be required to determine the amount of validity of any claim made against the Escrow Fund.

5. ACCOUNTING. The Escrowee shall provide the Agency and the Client an accounting as to each payment or disbursement made from the Escrow Fund. Those disbursements shall only be upon the joint approval of the Agency and the Client.

6. ESCROWEE'S COMPENSATION. The compensation of the Escrowee has been fixed by the Agency, Client and Escrowee under a separate Agreement. The Escrowee shall not be entitled to any additional compensation for service rendered under this Escrow Agreement.

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7. PROMPTNESS OF INVOICES. The Agency and the Client shall take the reasonable steps to have all invoices attributable to the direct mail fund raising programs submitted promptly to the Escrowee for payment.

8. REPAYMENT OF POSTAGE. All invoices for postage advances to the Client shall be paid on a priority basis. Invoices for postage advances paid from said Escrow Fund shall be authorized in writing by the Agency and shall not require the approval of the Client.

9. REIMBURSEMENT OF CLIENT BRE ACCOUNT. The Escrowee shall be authorized to reimburse the Client's postal BRE account as required without any further authorization by the Agency or Client.

10. BOND AND INSURANCE. The Escrowee shall provide a bond satisfactory to the Agency and the Client to cover its services under this Agreement. The Escrowee shall also provide an insurance policy with the Agency and Client as named insureds which protects them from any losses from theft and/or embezzlement during the period returns are in the care, custody and/or control of the Escrowee.

11. CLAIMS. The Agency and the Client shall at all times hereafter indemnify the Escrowee against all actions, proceedings, claims and demands by reasons of the delivery to him of direct mail fund raising proceeds and his payment of invoices under this agreement.

12. ASSIGNMENT AND DELEGATION. No party to this Agreement may assign any rights or delegate any duties hereunder without the express prior written consent of the other.

13. CONTROLLING LAW. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Virginia.

14. WAIVER. The failure of any party to this Agreement to object or to take affirmative action with respect to any conduct by the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

15. MODIFICATION. This Agreement may not be altered or modified without the expressed written consent of the Agency, the Client and the Escrowee.

16. ADDITIONAL TERMS.

The undersigned do hereby personally warrant and affirm that they are authorized to execute and bind the parties hereto.

ATTEST:

BY:

Response Dynamics, Inc. (Agency)

ATTEST:

BY:

(Client)

for Republican Challenge Committee

ATTEST:

BY:

(Escrowee)

ATTACHMENT C

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DRAFT

DRAFT

BY-LAWS  
OF  
REPUBLICAN CHALLENGERS COMMITTEE

ARTICLE I - NAME AND FORMATION

Section 1. There is hereby established and organized, the Republican Challengers Committee ("Committee"), a volunteer unincorporated association. The Committee is a non-connected political committee, as that term is defined by the Federal Election Campaign Act of 1971, as amended ("FECA") and as such is registered with the Federal Election Commission ("FEC").

ARTICLE II - PURPOSE OF COMMITTEE

Section 1. The purpose of the Committee is to support non-incumbent candidates for federal office who are affiliated with the Republican Party. The Committee shall raise funds in compliance with the FECA and use those funds in such a fashion which it considers to be beneficial to the support of candidates.

ARTICLE III - AFFILIATED STATE COMMITTEES

Section 1. The Committee is authorized to support non-incumbent state and local Republican candidates, and thereby is authorized to establish and organize committees at the state level which it from time to time are considered necessary in order to comply with the respective state campaign finance and election laws.

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#### ARTICLE IV - OFFICES

Section 1. The principle office of the committee in the state of Washington shall be at 19145 Woodinville-Duval Road, Suite D-165, Woodinville, WA 98072.

Section 2. The Committee may also have offices at such other places as the Board of Directors may from time to time appoint or the business of the corporation may require.

#### ARTICLE V. - COMMITTEE MEMBERS MEETING

Section 1. Meetings of Committee members shall be held at the registered office of the corporation in this state or at such place, either within or without this state, as may be selected from time to time by the Board of Directors.

Section 2. Annual Meetings: The annual meeting of the members shall be held on the 21st of June in each year if not a legal holiday, and if a legal holiday, then on the next secular day following at 10:00 o'clock a.m., when they shall elect a Board of Directors and transact such other business as may properly be brought before the meeting. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient.

Section 3. Election of Directors: Election of the directors of the corporation may be by written ballot.

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**Section 4. Special Meetings:** Special meetings of the members may be called at any time by the President, the Board of Directors, or members entitled to cast at least one-fifth of the votes which all members are entitled to cast at the special meeting. A special meeting may be called at any time, upon written request by those authorized, and such special meeting is to be held not less than two (2) days and not more than sixty (60) days after receipt of the request. If the Secretary shall neglect or refuse to fix the date of the meeting and give notice thereof, the member or members calling the meeting may do so.

Business transacted at all special meetings shall be confined to the objects stated in the call and matters germane thereto, unless all members entitled to vote are present and consent.

Written notice of a special meeting to members stating the time and place and object thereof, shall be given to each stockholder entitled to vote thereat at least two (2) days before such meeting, unless a greater period of notice is required by statute in a particular case.

**Section 5. Quorum:** A majority of the members entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of the members. If less than a majority of the members entitled to vote is represented at a meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at

the meeting as originally noticed. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 6. Proxies: Each member entitled to vote at a meeting of members or to express consent or dissent to Committee action in writing without a meeting, may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

A duly executed proxy shall be irrevocable if it states that it is irrevocable. All proxies shall be filed with the Secretary of the meeting before being voted upon.

Section 7. Notice of Meetings: Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called.

Unless otherwise provided by law, written notice of any meeting but for a special meeting, shall be given not less than ten (10) or more than sixty (60) days before the date of the meeting to each member entitled to vote at such meeting.

Section 8. Consent in Lieu of Meeting: Any action required to be taken at any annual or special meeting of members, or any action which may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior

notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by not less than the minimum number of members who would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to those members who have not consented in writing.

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Section 9. List of Members: The officer who has charge of the member's ledger of the committee shall prepare and make available, at least ten (10) days before every meeting of members, a complete list of the members entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each member. The list shall be open to the examination of any member, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any member who is present.

ARTICLE VI - DIRECTORS

*Minimum*

Section 1. The business and affairs of this committee shall be managed by its Board of Directors, seven (7) in number. The directors need not be residents of this state. They shall be elected by the members at the annual meeting of members of the Committee, and each director shall be elected for the term of one (1) year, and until his successor shall be elected and shall qualify or until his earlier resignation or removal.

Section 2. Regular Meetings: Regular meetings of the Board shall be held without notice on first day of each calendar quarter, or if such a date in a Saturday, Sunday or holiday, then the first business day thereafter, at the registered office of the corporation, or at such other time and place as shall be determined by the Board.

Section 3. Special Meetings: Special Meetings of the Board may be called the President on one (1) days notice to each director, either personally or by mail or by telegram; special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of a majority of the directors in office.

Section 4. Quorum: A majority of the total number of directors shall constitute a quorum for the transaction of business.

Section 5. Consent in Lieu of Meeting: Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a

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meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee. The Board of Directors may hold its meetings, and have an office or offices, outside of this state.

Section 6. Conference Telephone: One or more directors may participate in a meeting of the Board, of a committee of the Board or of the members, by means of conference telephone or similar communications equipment by means which all persons participating in the meetings can hear each other; participation in this manner shall constitute presence in person at such meeting.

Section 7. Compensation: Directors as such, shall not receive any stated salary for their services, but by resolution of the Board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board PROVIDED, that nothing herein contained shall be construed to preclude any director from serving the committee in any other capacity and receiving compensation therefor.

Section 8. Removal: Any director or the entire Board of Directors may be removed, with or without cause, by the majority of the members then entitled to vote at an election of directors.

#### ARTICLE VII - OFFICERS

Section 1. The executive officers of the committee shall be chosen by the directors and shall be a President, Secretary, and Treasurer. The Board of Directors may also choose a Chairman,

one or more Vice Presidents and such other officers as it shall deem necessary. Any number of offices may be held by the same person.

**Section 2. Salaries:** Salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

**Section 3. Term of Office:** The officers of the committee shall hold office for one (1) year and until their successors are chosen and have qualified. Any officer or agent elected or appointed by the Board may be removed by the Board of Directors whenever in its judgment the best interest of the committee will be served thereby.

**Section 4. President:** The President shall be the chief executive officer of the committee; he shall preside at all meetings of the members and directors; he shall have general and active management of the business of the committee, shall see that all orders and resolutions of the Board are carried into effect, subject, however, to the right of the directors to delegate any specific powers, except such as may be by statute exclusively conferred on the President, to any other officer or officers of the committee. He shall execute bonds, mortgages and other contracts of the committee. He shall be EX-OFFICIO a member of all committees, and shall have the general power and duties of supervision and management usually vested in the office of the President of a committee.

**Section 5. Secretary:** The Secretary shall attend all sessions of the Board and all meetings of the members and act as clerk thereof, and record all the votes of the committee and the

minutes of all its transactions in a book to be kept for that purpose, and shall perform like duties for all committees of the Board of Directors when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, and under whose supervision he shall be.

9 6 0 4 3 7 1 3 6 9  
Section 6. Treasurer: The Treasurer shall have custody of the committee funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the committee, and shall keep the moneys of the committee in a separate account to the credit of the committee. He shall disburse the funds of the committee as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the committee. All funds and accounting shall be conducted in compliance with the FECA, or the applicable state campaign finance or election law regulations.

#### ARTICLE VIII - VACANCIES

Section 1. Any vacancy occurring in any office of the committee by death, resignation, removal or otherwise, shall be filled by the Board of Directors. Vacancies and newly created directorships resulting from any increase in the authorized

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number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If at any time, by reason of death or resignation or other cause, the committee should have no directors in office, then any officer or any member or an executor, administrator, trustee or other fiduciary entrusted with like responsibility for the person, may call a special meeting of members in accordance with the provisions of these By-Laws.

**Section 2. Resignations Effective at Future Date:** When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

#### ARTICLE IX - COMMITTEE RECORDS

**Section 1.** Any member of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the list of its members, and its other books and records, and to make copies of extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a member. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other

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writing which authorizes the attorney or other agent to so act on behalf of the member. The demand under oath shall be directed to the committee at its registered office in this state or at its principal place of business.

#### ARTICLE X - MISCELLANEOUS PROVISIONS

Section 1. Checks: All checks or demands for money and notes of the committee shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Section 2. Fiscal Year: The fiscal year shall begin on the first day of January.

Section 3. Notice: Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof through the mail, or by telegram, charges prepaid, to his address appearing on the books of the corporation, or supplied by him to the corporation for the purpose of notice. If the notice is sent by mail or by telegraph, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office for transmission to such person. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting of members, the general nature of law business to be transacted.



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**Section 4. Waiver of Notice:** Whenever any written notice is required by statute, or by the Certificate or the By-Laws of this committee, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Except in the case of a special meeting of members, neither the business to be transacted at nor the purpose of the meeting need be specified in the waiver of notice of such meeting. Attendance of a person either in person or by proxy, at any meeting shall constitute a waiver of notice of such meetings, except where a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

**Section 5. Disallowed Compensation:** Any payments made to an officer or employee of the committee such as a salary, commission, bonus, interest, rent, travel or entertainment expense incurred by him, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service, shall be reimbursed by such officer or employee to the committee to the full extent of such disallowance. It shall be the duty of the directors, as a Board, to enforce payment of each such amount disallowed. In lieu of payment by the officer or employee, subject to the determination of the directors, proportionate amounts may be withheld from his future compensation payments until the amount owed to the committee has been recovered.

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**Section 6. Resignation:** Any director or other officer may resign at anytime, such resignation to be in writing, and to take effect from the time of its receipt by the committee, unless some time be fixed in the resignation and then from that date. The acceptance of a resignation shall not be required to make it effective.

#### ARTICLE XI - ANNUAL STATEMENT

**Section 1.** The President and Board of Directors shall present at each annual meeting a fully and complete statement of the business and affairs of the committee for the preceding year. Such statement shall be prepared and presented in whatever manner the Board of Directors shall deem advisable and need not be verified by a certified public accountant.

#### ARTICLE XII - AMENDMENTS

**Section 1.** These By-Laws may be amended or repealed by the vote of members entitled to cast at least a majority of the votes which all members are entitled to cast thereon, at any regular or special meeting of the members, duly convened after notice to the members of that purpose.

BEFORE THE  
FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3638

RESPONSE OF PRESIDENTIAL VICTORY COMMITTEE  
TO INTERROGATORIES AND REQUESTS FOR DOCUMENTS

The following information is provided in response to the Commission's Subpoena to Produce Documents and Order to Submit Written Answers to Interrogatories dated October 3, 1994, in the above-captioned matter.

1. Produce copies of the Presidential Victory Committee's constitution and bylaws.

ANSWER: See attached.

2. Produce copies of minutes of all meetings held in 1991 and 1992 for purposes of establishing the Presidential Victory Committee.

ANSWER: See attached.

3. Produce copies of tape recordings of the proceedings of all meetings held in 1991 and 1992 for purposes of establishing the Presidential Victory Committee.

ANSWER: None.

4. Identify all individuals who took part in decisions leading to the establishment of the Presidential Victory Committee.

OBJECTION: The question is overly broad and unduly burdensome, and it seeks information that is neither relevant to the pending MUR nor reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving that objection, and without attempting to name all persons who may in some way have been involved, the following individuals played a significant role in the decision to establish Presidential Victory Committee:

Floyd G. Brown  
11094-D Lee Highway, Suite 2100  
Fairfax, Virginia 22030

Incorporator, officer, director

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10120 3 35 11 94

John Fitch  
4826 South 29th Road  
Arlington, Virginia 22206  
(last known address)  
Incorporator

Joe Barrett  
10628 Eastwood Avenue  
Silver Spring, Maryland 20901  
(last known address)  
Incorporator

Robert E. Miller, Jr.  
Miller/Reos & Company  
450 "A" Street, 2nd Floor  
San Diego, California 92101  
Officer

William J. Olson, Esquire  
8180 Greensboro Drive, Suite 1070  
McLean, Virginia 22102-3823  
Legal Counsel

Cathy Mickels  
8191 Guide Meridian, Suite 129  
Lynden, Washington 98264  
Director

Doug Ramsey  
19029 S.E. 271st Street  
Kent, Washington 98042  
Director

5. List by date, participants and location all meetings held for purposes of establishment of the Presidential Victory Committee.

OBJECTION: The question is overly broad and unduly burdensome, and it seeks information that is neither relevant to the pending MUR nor reasonably calculated to lead to the discovery of relevant or admissible evidence. Without waiving that objection, this information is unknown, but it would appear from information provided by legal counsel that one such meeting would have occurred among the incorporators on February 5, 1992, and another with counsel in Washington, D.C., on February 6, 1992. See also the attached organizational meeting minutes.

6. Identify by year(s) of service and office all members of the Presidential Victory Committee's Board of Directors who have served between PVC's creation and the date of this Order.

ANSWER: All members of the Board of Directors and officers, with their inclusive dates of service, are as follows:

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Floyd G. Brown 2/7/92-present  
(President, Director)

John A. Fitch 2/7/92-approximately 2/15/92  
4826 South 29th Road  
Arlington, Virginia 22206  
(Executive Director, Assistant Treasurer)

Robert E. Miller 2/6/92-present  
Miller/Reos & Company  
450 "A" Street, 2nd Floor  
San Diego, California 92101  
(Treasurer)

David Bossie 2/15/92-present  
11094-D Lee Highway, Suite 2100  
Fairfax, Virginia 22030

(Secretary, Assistant Treasurer)

Cathy Mickels  
8191 Guide Meridian, Suite 129  
Lynden, Washington 98264  
Director 2/6/92-present

Doug Ramsey  
19029 S.E. 271st Street  
Kent, Washington 98042  
Director 2/6/92-present

7. Identify by year(s) of service and office all officers of the Presidential Victory Committee who have served between the committee's creation and the date of this Order.

ANSWER: See answer to #6, above.

8. Identify by year(s) of service and position all employees of the Presidential Victory Committee who have served between the committee's creation and the date of this Order.

ANSWER:

David Bossie 2/15/92-11/25/92  
11094-D Lee Highway, Suite 2100  
Fairfax, Virginia 22030

(Secretary, Assistant Treasurer)

Martin P. Hefner 7/1/92-11/30/92  
223 8th Street, N.E.  
Washington, D.C.  
(Assistant)  
(last known address)

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9. List by date and amount any and all transfers of funds made between the Presidential Victory Committee and the Republican Challengers Committee from September 1, 1991 to the date of this Order.

ANSWER: None

10. List by date and amount any and all transfers of funds made between the Presidential Victory Committee and the National Security Political Action Committee from September 1, 1991 to the date of this Order.

ANSWER: None

11. Produce copies of all correspondence between the Presidential Victory Committee and the Republican Challengers Committee from September 1, 1991 to the date of this Subpoena.

ANSWER: None

12. Produce copies of all correspondence between the Presidential Victory Committee and the National Security Political Action Committee from September 1, 1991 to the date of this Subpoena.

ANSWER: None

I hereby declare or affirm that the foregoing answers are true to the best of my personal knowledge, or based on my information and belief, as indicated by the text of each answer.

Date: NOVEMBER 21, 1994

Floyd G. Brown  
FLOYD G. BROWN

Commonwealth of Virginia)  
City ) SS:  
County of Fairfax )

Subscribed and sworn to before me in my district, this 21st day of November, 1994.

Kevin E. Kelley  
NOTARY PUBLIC

My Commission Expires: 1/31/98

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
BUSINESS REGULATION ADMINISTRATION



CERTIFICATE

THIS IS TO CERTIFY that all applicable provisions of the DISTRICT  
OF COLUMBIA NONPROFIT CORPORATION ACT have been complied with and  
accordingly, this CERTIFICATE of Incorporation is hereby issued to  
PRESIDENTIAL VICTORY COMMITTEE

as of February 6th , 1992 .

Aubrey H. Edwards  
Director

James E. Kerr  
Administrator  
Business Regulation Administration

*Vandy L. Jamison, Jr.*  
Assistant Vandy L. Jamison, Jr  
Superintendent of Corporations  
Corporations Division

Sharon Pratt Kelly  
Mayor

RECEIVED  
GENERAL ELECTION  
COMMISSION  
OFFICE OF THE  
COUNCIL  
123 3 39 PM '94

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ARTICLES OF INCORPORATION  
OF  
PRESIDENTIAL VICTORY COMMITTEE

FILE  
FEB 6 1981

TO: Department of Consumer  
and Regulatory Affairs  
Washington, D.C. 20001

We, the undersigned natural persons of the age of eighteen (18) years or more, acting as incorporators of a corporation, adopt the following Articles of Incorporation for such corporation pursuant to the District of Columbia Nonprofit Corporation Act (D.C. Code, 1981 edition, Title 29, Chapter 5):

ARTICLE I

NAME

The name of the Corporation is PRESIDENTIAL VICTORY COMMITTEE, herein referred to as the "Corporation."

ARTICLE II

DURATION

The period of duration is perpetual.

ARTICLE III

PURPOSES AND POWERS

(A) Purposes: The objects and purposes for which the Corporation is exclusively organized and shall operate are to foster and further responsible government in America in the following ways: by supporting or opposing the selection, appointment, nomination or election of certain individuals to any federal, state, or local public office, or office in a political

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organization, or the election of Presidential or Vice Presidential electors, based upon their philosophy, record and qualifications and whether or not they further the principles of the Corporation; by supporting or opposing certain initiatives, referenda, and recalls based on their merit and whether or not they further the principles of the Corporation; and to further such principles in other ways deemed appropriate by the Corporation, including educational and social activities.

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(B) Powers: To achieve these purposes, and all related purposes, the Corporation is empowered, inter alia, within the limits of applicable law, to exercise any powers necessary, suitable and proper for the accomplishment, attainment or furtherance of its purposes and to engage in all lawful activities and efforts that may be reasonably intended or expected to promote and advance the purposes of the Corporation. In addition, the Corporation shall have all of the specific, general, and incidental powers granted to it under the District of Columbia Nonprofit Corporation Act and other laws of the District of Columbia.

These powers include, but are not limited to, the following: to solicit and accept voluntary contributions and to expend such contributions to operate the Corporation and to influence the election of candidates for federal, state, and local public office and the approval or rejection of initiatives, referenda, and recalls.

These powers are subject to the limitations that:

(1) The Corporation is a nonprofit corporation organized without capital stock.

(2) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributed to, any Director or Officer of the Corporation, or any private persons (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its corporate purposes), and no Director or Officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation, or in any other event.

(3) Notwithstanding any other provisions of these Articles, the Corporation primarily shall conduct or carry on any activities permitted to be conducted or carried on as an exempt function by a political organization under Section 527 of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code.

(4) All contributions to the Corporation shall be voluntary, and no contributions shall be solicited or secured in return for promising or obtaining any individual employment or other benefit.

(5) With respect to federal elections, no contribution shall be accepted, and no expenditure shall be made, at a time when there is a vacancy in the office of Treasurer.

(6) The expenditures of funds shall be within the sole discretion of the Board of Directors.

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## ARTICLE IV

MEMBERS

The Corporation may have such class or classes of members or membership as the Board of Directors may prescribe in the Bylaws, but members shall not have the right to vote.

## ARTICLE V

CAPITALIZATION

The Corporation shall issue no capital stock.

## ARTICLE VI

DIRECTORS

Except for the initial Board of Directors, whose names are set forth in these Articles of Incorporation, the Board of Directors shall be elected or appointed as provided in the Bylaws.

## ARTICLE VII

BYLAWS

Provisions for the regulation of the internal affairs of the Corporation, except as provided in these Articles of Incorporation, shall be determined and fixed by the Bylaws as adopted by the Board of Directors.

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## ARTICLE VIII

DISSOLUTION

In the event of the liquidation, dissolution or winding up of the business and affairs of the Corporation, whether voluntary or involuntary or by operation of law, the Board of Directors, after paying or making provision for the payment of all proper liabilities of the Corporation, shall dispose of all of the assets of the Corporation to federal or state political committee(s), or as otherwise permitted under applicable law.

## ARTICLE IX

INITIAL REGISTERED OFFICE AND AGENT

The address of the initial registered office of the Corporation and the name of its initial registered agent at such address are: CT Corporation System, 1025 Vermont Avenue, N.W., Washington, D.C. 20005.

## ARTICLE X

INITIAL BOARD OF DIRECTORS

The number of directors constituting the initial Board of Directors is three (3), and the names and addresses of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify are:

Floyd G. Brown  
5404 Heatherford Court  
Fairfax, Virginia 22030

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Cathy Mickels  
8191 Guide Meridian, Suite 129  
Lynden, Washington 98264

Doug Ramsey  
19029 S.E. 271st Street  
Kent, Washington 98042

ARTICLE XI

INCORPORATORS

The names and addresses of the incorporators are:

Floyd G. Brown  
5404 Heatherford Court  
Fairfax, Virginia 22030

John Fitch  
4826 South 27th Road  
Arlington, Virginia 22206

Joe Barrett  
10628 Eastwood Avenue  
Silver Spring, Maryland 20901

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IN WITNESS WHEREOF we have signed and acknowledged these Articles  
of Incorporation this 5<sup>th</sup> day of February, 1992.

Floyd G. Brown  
FLOYD G. BROWN

John Fitch  
JOHN FITCH

Joe Barrett  
JOE BARRETT

City of Washington :  
: s.s.

District of Columbia:  
County of Fairfax

I, Elizabeth A. Allen, a Notary Public, hereby  
certify that on this 5<sup>th</sup> day of February, 1992, personally  
appeared before me Floyd G. Brown, John Fitch and Joe Barrett who  
signed the foregoing document as incorporators and stated that the  
statements therein contained are true.

Elizabeth A. Allen  
NOTARY PUBLIC

I was commissioned notary as: Elizabeth A. Buscher

Nov 23 3 39 PM '94

BYLAWS  
OF  
PRESIDENTIAL VICTORY COMMITTEE

ARTICLE I

OFFICES

Section 1. Registered Office and Registered Agent. The Corporation shall at all times maintain in the District of Columbia a registered office, and registered agent whose business office shall be identical with the registered office.

Section 2. Other Offices. The Corporation may also have such other offices within or without the District of Columbia as the Board of Directors may designate from time to time and as the business and affairs of the Corporation may require.

ARTICLE II

PURPOSES

Section 1. Nature of Corporation. The Corporation is a nonprofit corporation formed under the District of Columbia Nonprofit Corporation Act, which is organized and shall be operated in accordance with the meaning and provisions of Section 527 of the Internal Revenue Code and the regulations issued thereunder.

Section 2. Primary Purposes. The Corporation is organized for the purposes set forth in its Articles of Incorporation which are filed with the District of Columbia.

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## ARTICLE III

BOARD OF DIRECTORS

Section 1. General Powers. The Board of Directors shall have the general power to manage and control the affairs and property of the Corporation, and shall have full power, by majority vote, to adopt rules and regulations governing the action of the Board of Directors.

Section 2. Number, Election, and Term of Office. The Board of Directors shall consist of three (3) members. Directors need not be residents of the District of Columbia. Election to the Board of Directors shall be by majority vote of the members of the Board of Directors, which shall occur, except in the case of filling vacancies, at each annual meeting thereof. Each Director shall hold office for a term of one (1) year and thereafter until his successor is elected and qualified.

Section 3. Officers. The Board of Directors may designate from among its members a Chairman, Vice Chairman, and such other officers as it may consider appropriate with such duties as it may prescribe.

Section 4. Vacancies. Any vacancy occurring on the Board of Directors prior to the expiration of a term shall be filled by such person as shall be elected by the remaining members of the Board of Directors. A Director so elected to fill a vacancy shall hold office for the unexpired term of his predecessor in office.

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Section 5. Annual and Regular Meetings. The Board of Directors shall hold an annual meeting at such time and place as the Board of Directors shall prescribe by resolution. The Board of Directors may prescribe by resolution the time and place of such other regular meetings.

Section 6. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman, President, or any one Director. The person or persons authorized to call special meetings of the Board of Directors may fix any reasonable date, hour, and place, either within or without the District of Columbia, as the date, hour, and place for holding any special meeting of the Board called by them.

Section 7. Notice. Notice of any special meeting of the Board of Directors shall be given not less than ten (10) or more than fifty (50) days previously thereto by written notice delivered personally or sent by mail or telegram to each Director at his address as shown in the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the mail in a sealed envelope so addressed, with postage prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not

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lawfully called or convened. The business to be transacted at, and the purpose of, any annual meeting of the Board of Directors, need not be specified in the notice or waiver of notice of such meeting.

Section 8. Quorum and Proxies. A majority of the total number of Directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. If less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. Proxies shall not be permitted.

Section 9. Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these Bylaws.

Section 10. Compensation. Directors as such shall not receive any stated salaries for their services, but may be reimbursed for reasonable expenses. Nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 11. Informal Action. Any action may be taken without a meeting of the Directors if a consent in writing setting forth the action so taken shall be signed by all of the Directors.

Section 12. Resignation. A Director may resign from the Board of Directors at any time by giving notice of his

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resignation in writing addressed to the Chairman, President, or Secretary of the Corporation or by presenting his written resignation at an annual, regular, or special meeting of the Board of Directors.

#### ARTICLE IV

##### REGULAR COMMITTEES

Section 1. Purposes. The Board of Directors may establish such regular committees to assist it in the performance of its duties as it considers appropriate.

Section 2. Number, Election, and Term of Office. The number of members of each regular committee shall be determined by the Board of Directors. Members of each regular committee shall be elected by the affirmative vote of a majority of the Board of Directors and shall serve until resignation or removal by the affirmative vote of a majority of the Board of Directors. Only Directors may serve as committee members.

Section 3. Officers. The Board of Directors may designate from among the members of each regular committee a Chairman and Vice Chairman of such committee, and such other officers as it may determine. The Chairman, Vice Chairman, and any other officers of each such committee shall have such duties as the Board of Directors prescribes.

Section 4. Vacancies. Vacancies in the membership of any committee shall be filled by the Board of Directors.

Section 5. Quorum. Unless otherwise provided in the resolution of the Board of Directors designating a committee, a

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majority of the whole committee shall constitute a quorum and the act of a majority of the members present at the meeting at which a quorum is present shall be the act of the committee.

Section 6. Rules. Each committee may adopt rules for its own government not inconsistent with the Bylaws or with rules adopted by the Board of Directors.

Section 7. Powers. Each regular committee shall have such powers as the Board of Directors may grant it consistent with law, the Articles of Incorporation, and the Bylaws.

## ARTICLE V

### ADVISORY COMMITTEES

Section 1. Purpose. The Board of Directors may establish such advisory committees as it considers appropriate. The purpose of all such committees shall be to advise the Board of Directors on such matters relating to the Corporation as the Board of Directors designates.

Section 2. Number, Election, and Term of Office. The number of members of each advisory committee shall be as determined by the Board of Directors. Members of each advisory committee shall be elected by the affirmative vote of a majority of the Board of Directors and shall serve until resignation or removal by the affirmative vote of a majority of the Board of Directors.

Section 3. Officers. The Board of Directors may designate from among the members of each advisory committee a Chairman and Vice Chairman of such committee, and such other officers as it

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may determine. The Chairman, Vice Chairman, and any other officers of each such committee shall have such duties as the Board of Directors prescribes.

Section 4. Powers. Each advisory committee shall have the power to advise the Board of Directors and such other powers as the Board of Directors may grant it consistent with law, the Articles of Incorporation, and the Bylaws.

## ARTICLE VI

### OFFICERS

Section 1. Officers. The Officers of the Corporation shall be a President, Secretary, Treasurer, and Assistant Treasurer, and such other Officers as may be elected in accordance with the provisions of this Article. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election and Term of Office. The Officers of the Corporation shall be elected by a majority vote of the Board of Directors at the organizational meeting and at every annual meeting of the Board thereafter, except that new offices may be created and filled at any meeting of the Board of Directors. Each Officer shall hold office for a term of one (1) year and thereafter until his successor shall have been duly elected and qualified.

Section 3. Removal. Any Officer may be removed upon an affirmative vote of a majority of the entire Board of Directors,

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whenever in its judgment the best interests of the Corporation would be served thereby.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Corporation and, in general, shall supervise and control all of the business and affairs of the Corporation. He may sign, with the Secretary, Treasurer or any other proper Officer of the Corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments or documents which the Board of Directors has authorized to be executed; and perform all such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors; see that all notices are duly given in accordance with the provisions of the Bylaws or as required by law; be custodian of the corporate records and seal; and perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. Treasurer. The Treasurer shall be responsible for all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected

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in accordance with the provisions of the Bylaws; and perform all such other duties as may be prescribed by the President or by the Board of Directors from time to time. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 8. Assistant Treasurer. The Assistant Treasurer shall perform all such duties as may be prescribed by the Treasurer, by the President, or by the Board of Directors from time to time.

#### ARTICLE VII

##### CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board of Directors may authorize any Officer or Officers, agent or agents of the Corporation, in addition to or in place of the Officers so authorized by the Bylaws, to enter into a contract or execute and deliver any instrument or document in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, and Similar Documents. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such Officer or Officers and/or agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

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Section 3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

Section 4. Gifts and Contributions. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation. Such contributions, gifts, bequests, or devises shall be in conformity with the laws of the United States, the District of Columbia, and any other relevant jurisdiction.

#### ARTICLE VIII

##### BOOKS AND RECORDS

The Corporation shall keep correct and complete books and records of account and also shall keep minutes of the proceedings of its Board of Directors and committees having any of the authority of the Board of Directors.

#### ARTICLE IX

##### FISCAL YEAR

The fiscal year of the Corporation shall begin on the first day of January and end on the last day of December in each year.

#### ARTICLE X

##### MEMBERS

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The Corporation shall have such class or classes of members or membership as may be approved by resolution of the Board of Directors, but members shall not have the right to vote.

#### ARTICLE XI

##### WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the District of Columbia Nonprofit Corporation Act or under the provisions of the Articles of Incorporation or the Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

#### ARTICLE XII

##### AMENDMENTS TO BYLAWS

The Bylaws may be altered, amended or repealed and new Bylaws may be adopted by majority vote of the Directors present at any annual, regular or special meeting, if at least ten (10) days written notice is given of intention to alter, amend or repeal the Bylaws or to adopt new Bylaws at such meeting.

#### ARTICLE XIII

##### INDEMNIFICATION

The Corporation shall indemnify each of its Directors, Officers, and employees, whether or not then in office, and his executor, administrator, and heirs, against all reasonable expenses actually and necessarily incurred by him, including but

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not limited to, judgments, costs and counsel fees, in connection with the defense of any litigation, including any civil, criminal or administrative action, suit or proceeding, to which he may have been made a party because he is or was a Director, Officer or employee of the Corporation. He shall have no right to reimbursement, however, in relation to matters as to which he has been adjudged liable to the Corporation for misconduct in the performance of his duties. The right to indemnity for expenses shall also apply to expenses of suits which are compromised or settled. It shall be the policy of the Corporation to indemnify its Directors, Officers, and employees for the expenses set forth above which are incurred in the good faith performance of their duties.

The Directors shall not be liable for any action taken or omitted by them in good faith, or for the acts of any agents or employee selected by the Directors with reasonable care, or for any act of omission of any other Director.

The foregoing right of indemnification shall be in addition to, not exclusive of, all other rights to which such Director, Officer and employee may now, or in the future, be entitled.

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CERTIFICATION

I, Floyd G. Brown, hereby certify that the foregoing Bylaws of Presidential Victory Committee are a complete and accurate copy of the original as adopted by the Board of Directors as of this date.

Floyd G. Brown  
President and Director

FEBRUARY 18, 1992  
Date

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PRESIDENTIAL VICTORY COMMITTEE

WAIVER OF NOTICE

BOARD OF DIRECTORS  
ORGANIZATION MEETING

February 18, 1992

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Nov 23 3 39 PM '94

As members of the initial and/or permanent Board of Directors, acting pursuant to Sections 29-534 and 29-599 of the District of Columbia Code, we waive notice of the organization meeting of the Board of Directors to be held on February 18, 1992 as required by and to be conducted pursuant to Section 29-534 of such Code.

Floyd G. Brown  
Floyd G. Brown

Cathy Mickels  
Cathy Mickels

Doug Ramsey  
Doug Ramsey

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PRESIDENTIAL VICTORY COMMITTEE  
BOARD OF DIRECTORS  
ORGANIZATION MEETING  
MINUTES

FEBRUARY 18, 1992

Initial Board of Directors

The following members of initial Board of Directors of Presidential Victory Committee were present at the organization meeting of the Board held as required by Section 29-534 of the District of Columbia Code:

Floyd G. Brown  
5404 Heatherford Court  
Fairfax, Virginia 22030

Cathy Mickels  
8191 Guide Meridian, Suite 129  
Lynden, Washington 98264

Doug Ramsey  
19019 S.E. 271st Street  
Kent, Washington 98042

Each member of the initial Board of Directors present executed a waiver of notice for the meeting as attached hereto.

Each member affirmatively expressed his or her desire to serve on the initial Board and his or her acceptance of the duties of serving on the initial Board.

The following persons were nominated to serve on the permanent Board:

Floyd G. Brown

Cathy Mickels

Doug Ramsey

The nominees for the permanent Board were elected unanimously.

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Permanent Board of Directors

Messrs. Floyd G. Brown and Doug Ramsey and Ms. Cathy Mickels were present at the meeting.

Mr. Floyd Brown was nominated to serve as Chairman of the Board of Directors. The nominee for Chairman was elected unanimously.

Mr. Robert Miller was nominated to serve as Treasurer of the Board of Directors. The nominee for Treasurer was elected unanimously.

Mr. David Bossie was nominated to serve as Assistant Treasurer of the Board of Directors. The nominee for Assistant Treasurer was elected unanimously.

Mr. David Bossie was nominated to serve as Secretary of the Board of Directors. The nominee for Secretary was elected unanimously.

The Bylaws, as attached hereto, were adopted unanimously without amendment by the Board.

Nominations for officers of the Corporation were received as follows:

President:	Floyd G. Brown
Secretary:	David Bossie
Treasurer:	Robert Miller
Assistant Treasurer:	David Bossie

The nominees for officer positions were elected unanimously.

By unanimous consent, Mr. Brown was authorized to open a corporate bank account at the George Mason Bank (Fairfax,

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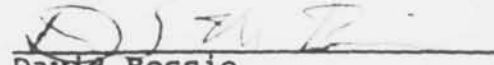
Virginia) and First Interstate Bank (San Diego, California) using whatever form the bank might provide. All checks shall be approved by the Treasurer, Assistant Treasurer or President.


William J. Olson of the firm of Gilman, Olson & Pangia, 1815 H Street, N.W., Suite 600, Washington, D.C. 20006 was directed to acquire a corporate seal and minute book.

By unanimous consent, the permanent Board ratified all prior acts taken by the Corporation's organizer, incorporators, legal counsel and initial Board.


There being no further business, the meeting was adjourned.


Respectfully submitted,


  
David Bossie  
Secretary

  
Floyd G. Brown  
Chairman and President

APPROVED:

  
Floyd G. Brown  
Member of the Initial and  
Permanent Boards of  
Directors

  
Cathy Mickels  
Member of the Initial and  
Permanent Boards of  
Directors

  
Doug Ramsey  
Member of the Initial and  
Permanent Boards of  
Directors

96043771402

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

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

December 5, 1994

Mr. Lawrence Noble, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D. C. 20463

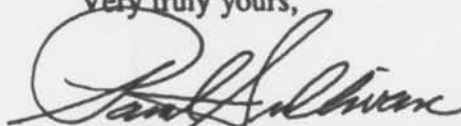
Att: Anne A. Weissenborn, Esquire

RE: MUR 3638 NSPAC  
Interrogatory Responses and Document Production

Dear Ms. Weissenborn:

Enclosed please find responses to interrogatories propounded by the Commission to National Security PAC in the above referenced matter.

Very truly yours,



Paul E. Sullivan  
Counsel to NSPAC

Enclosure

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF THE  
GENERAL COUNSEL

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BEFORE THE FEDERAL ELECTION COMMISSION

National Security Political Action  
Committee, Elizabeth I. Fediay,  
as Treasurer

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MUR 3638  
Responses to Interrogatories and Subpoena  
to Produce Documents

Elizabeth Fediay, as treasurer of National Security Political Action Committee ("NSPAC") hereby responds as follows to the interrogatories propounded by the Federal Election Commission in its October 3, 1994 letter to NSPAC.

Interrogatory 1 Response: There are no documents relating to the negotiations for the April 7, 1986 contract between NSPAC and RDI.

Interrogatory 2 Response: There are no documents relating to the negotiations of the April 28, 1986 letter agreement signed by NSPAC with American Telephone Marketing Group, Inc. ("ATMG").

Interrogatory 3 Response: David Kunko and Ron Kanfer

Interrogatory 4 Response: For those negotiations David Kunko and Ron Kanfer represented ATMG. No other ATMG representatives were present for those negotiations.

Interrogatory 5 Response: Elizabeth I. Fediay was the only individual who represented NSPAC in the 1986 negotiations with RDI.

Interrogatory 6 Response: The only individual who represented NSPAC in these ATMG negotiations was Elizabeth I. Fediay.

Interrogatory 7 Response: Based upon my contacts and negotiations with RDI and ATMG, the only two individuals who had primary responsibility for the performance of RDI and ATMG were Ron Kanfer and David Kunko. On certain occasions, staff members such as writers, graphic artists, and similar type of staff, who were represented to me as employees of RDI and/or ATMG, attended meetings. I do not at this time recall the names of any specific such staff members nor has my memory been refreshed after reviewing my files on this matter. However, it was my experience that decision making responsibility fell solely upon Mr. Kanfer and Mr. Kunko. I am unaware of any individual at any of the other Companies who had primary responsibility for performance under the RDI/ATMG Agreements.

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- Interrogatory 8 Response:** It is my belief RDI was the principal contact who had the responsibilities for developing and implementing the direct mail program and associated telemarketing program. As noted above, the two who undertook that activity for RDI were Mr. Kunko and Mr. Kanfer.
- Interrogatory 9 Response:** Yes. Please reference last paragraph of April 28, 1986 letter agreement.
- Interrogatory 10 Response:** Respondent presumes in responding to this interrogatory that the Commission is referencing the April 7, 1986 contract not April 7, 1976. With that caveat, NSPAC did not enter into a separate agreement with any Company, but for RDI and ATMG, as the term, "the Companies", is defined in the Commission's interrogatories.
- Interrogatory 11 Response:** I have no copies or originals of any written agreements entered into by RDI on behalf of NSPAC with the other "six companies".
- Interrogatory 12 Response:** There was not an interrogatory identified as "12" propounded to respondent.
- Interrogatory 13 Response:** A review of the files indicates that there was no written memorandum or correspondence between NSPAC and ATMG, or NSPAC and RDI, or NSPAC and "the Companies" relative to decisions to undertake new direct mail or telephone solicitation projects pursuant to the contract. Decisions on moving forward with new mail or telephone solicitations were essentially based upon verbal conferences between RDI representatives and myself. Many of those conversations utilized the list performance analysis summaries for guidance in making those decisions. Those summaries still in my possession are submitted herein as part of the documents produced for the Commission. In addition, draft copy for direct mail and telemarketing were presented and discussed. Those draft copies still in my possession are produced herewith. (See NSPAC MUR 3638 Documentation Box No. 3.)
- Interrogatory 14 Response:** The sole representative for NSPAC in any negotiations was Elizabeth Fediay and the primary representatives of the "Companies" in discussions and negotiations with NSPAC were Mr. Kanfer and Mr. Kunko representing RDI and ATMG. Occasionally, there were staff members of the Companies, none of whose identity I presently recall, who attended planning and creative meetings. No other person representing any of the other Companies negotiated with NSPAC.

Interrogatory 15 Response: The only individual who represented NSPAC in discussions and/or negotiations with the Companies concerning direct mail and telemarketing projects was Elizabeth Fedaiy.

Interrogatory 16 Response: In the documents presented to the Commission herewith there are various computer printouts entitled "Package Performance Summary". (NSPAC MUR 3638 Document Box 3.) These summaries were issued periodically and the particular report date is found in the upper left-hand corner of each report. There are two categories of such Package Performance Summaries: one entitled "House" which constitutes a review of certain mailing packages to the NSPAC "House list". The second category is one entitled "Prospect" which provides a summary of how these various lists, mailed on a test basis, performed. As you can determine, there are a variety of packages and mail lists referenced which are included in these submissions. There may be gaps in the time period for these summaries. During the course of time when these mailings were being undertaken, I would occasionally discard reports. Therefore, the documents submitted, though they represent all such documents which I have in my possession, may not include the entire file submitted to me by RDI. With regard to the telemarketing, there is a telemarketing performance analysis set of reports similarly included herewith. (NSPAC MUR 3638 Document Box 3.)

Interrogatory 17 Response: In the documents submitted herewith there are direct mail samples, copies and perhaps multiple copies of direct mail solicitations, which I presently have maintained in my files. I cannot attest to the fact that this is an entire set of direct mail packages which were produced by RDI on behalf of NSPAC. However, these are the only copies which I maintained in my file. (NSPAC MUR 3638 Document Box 3.)

Interrogatory 18 Response: The only copies of telemarketing scripts which I presently have in my possession are submitted herewith. (NSPAC MUR 3638 Document Box 3.) In reviewing the submitted scripts, I am unable to attest as to whether or not these were draft copies of scripts proposed or in fact were final scripts utilized in a telemarketing project. There are likely many other scripts that were proposed and utilized during this time period, however I do not possess any of those after reviewing my files.



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**Interrogatory 19 Response:** In response to this interrogatory, NSPAC submits that file identified as "Payment Authorizations" (NSPAC MUR 3638 Document Boxes 1,2,3.) Postage documents are also submitted herewith. (NSPAC MUR 3638 Document Box 4.) I cannot attest to the fact as to whether or not this represents a full and complete set of invoices sent to NSPAC by RDI, ATMG, and the "Companies". However, they do represent any and all invoices which I presently have in my possession.

**Interrogatory 20 Response:** Same response as Response 19 above herein.

**Interrogatory 21 Response:** Submitted in the file identified as "Payment Authorizations" (NSPAC MUR 3638 Document Boxes 1,2,3) are those documents relating to the invoices which were paid by the Washington Intelligence Bureau from the escrow fund. Postage documents are also submitted herewith. (NSPAC MUR 3638 Document Box 4.) Authorization for Washington Intelligence Bureau ("WIB") to make payments from the escrow fund required an escrow agreement payment authorization form which lists the vendor to be paid, the amount to be paid, and the sign off approval by NSPAC (the client) and RDI (the agency). RDI would submit the payment authorization to Elizabeth Fedaiy for review, approval, and signature

**Interrogatory 22 Response:** There was no interrogatory "22" identified in those propounded to respondent

**Interrogatory 23 Response:** I cannot identify nor second guess the policies and practices used by RDI and WIB to determine which vendors were to receive payments for services rendered to NSPAC. However, payments to vendors by WIB from the escrow fund were to be made in accordance with the terms and conditions set forth in the escrow agreement entered into with NSPAC.

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**Interrogatory 24 Response:** As the Commission will note from the escrow agreement between WIB and NSPAC, invoices were to be paid from the escrow fund by WIB in order of submission from RDI/NSPAC. To the best of my knowledge, that payment schedule was based upon chronological submission and was adhered to during the contract with RDI. At the time that RDI received the invoices, they were bundled with no preset number of invoices for payment authorization and submitted to NSPAC for approval. The only "determination" by NSPAC was to review the accuracy of the authorization and the amount of the invoice. Given the flow and quantity of direct mail and telemarketing projects and the on-going creation of new packages, it is difficult to determine whether was RDI paid in full prior to the disbursement of any funds to NSPAC. At all times, when NSPAC received fundraising proceeds, those proceeds were available on a cashflow basis in the escrow account.

**Interrogatory 25 Response:** Postage for all direct mail, to the best of my knowledge, was always paid prior to any mail being sent. Relative to the other direct mail services, such payments were not made on a project by project basis, but rather were reflected on a billing statement aggregating the total outstanding to RDI at any particular point in time. Such assessments continued on an ongoing basis to determine the availability of cashflow of funds based on the outstanding number of pieces of mail, the rate of return, and the balance of debt owed to RDI, and the various vendors and "Companies".

**Interrogatory 26 Response:** I am uncertain of the Commission's use of the term "unreimbursed advances" as used in the context of this interrogatory. Like any other vendor, NSPAC did receive invoices which constituted cost to the vendor and their profit margin which was built into that invoice. Therefore, classifying the entire amount of the invoice as a "reimbursement" is a misnomer since "profit" does not constitute an advance. NSPAC is unaware of how much of any invoice represented expenses to the vendor and how much represented a profit to RDI, and its associated companies. That may only be ascertained from RDI. However, the only truly identified category which could be classified as an "advance" is the postage, and as noted in Response #25 above, it is my understanding none of the debt presently declared and outstanding constitutes payment of postage.

**Interrogatory 27 Response:** To the best of my knowledge, RDI did establish the escrow account which was referenced in the April 7, 1986 contract.

Interrogatory 28 Response: In accordance with the escrow agreement, payments were to be made to the respective vendors directly from the escrow account not from payments received by RDI. To the best of my knowledge, this is the system to which all payment procedures adhered. Beyond that, I am unaware of any payment to a vendor that was made by or through RDI.

Interrogatory 29 Response: The concept and the impetus for the establishment of NSPAC was solely that of Elizabeth Fediay.

Interrogatory 30 Response: There does not now exist nor has there ever existed, a drafted constitution, constitution, or by-laws nor therefore any amendments to the two documents. The only organizational document is the Statement of Organization, (FEC Form 1) and its amendments, filed by NSPAC with the Federal Election Commission.

Interrogatory 31 Response: There are no minutes of meetings for purposes of establishing NSPAC.

Interrogatory 32 Response: There was never a board of directors of NSPAC, nor is there one at present.

Interrogatory 33 Response: There are no officers of NSPAC other than Elizabeth Fediay, registered as the Treasurer of NSPAC and who, for purposes of direct mail purpose, was identified as the "Chairman" of NSPAC. This was merely a nominal title, and reflected no particular officially recognized office or authority.

Interrogatory 34 Response: The following constitutes a list of all individuals who were employees of NSPAC and the period of time in which they were employees :

<u>Employee</u>	<u>Time Period</u>
1. Susan Darlene Dove	August 1988 - December 1989
2. John Dutton	June 1988 - July 1988
3. Eileen McNulty	September 1988 - December 1988

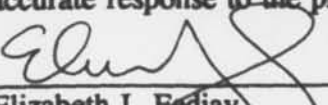
Interrogatory 35 Response: I recall is only one piece of correspondence between NSPAC and Mr. Brown. However, I do not recall if it was directed to him in his capacity as head of the Republican Challengers Committee or the Presidential Victory Committee. A letter, directed to Mr. Floyd Brown from myself, admonished him to refrain from further use of any and all materials which were originally developed and utilize by NSPAC. That letter was in direct response to the statements made by Mr. Brown in videotapes which I understood were distributed by Mr. Brown or one of his organizations.

Interrogatory 36 Response: See Response #35 above.

Interrogatory 37 Response: There were no transfers of funds between NSPAC and the Republican Challengers Committee.

Interrogatory 38 Response: There were no transfer of funds between NSPAC and the Presidential Victory Committee.

I swear that to the best of my knowledge, the foregoing responses constitute a true and accurate response to the propounded questions.

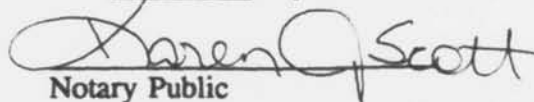
  
Elizabeth I. Feday

12/2/94  
Date

District of Columbia )  
) SS:  
)  
)  
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Subscribed and sworn to before me in my district this 2<sup>nd</sup> day of December, 1994

my commission expires: 4-14-99

  
Notary Public

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**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
FAX (202) 861-1783 • TELEX 2357276  
WRITER'S DIRECT DIAL NUMBER (202) 861-1504

December 7, 1994

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

Attention: Anne A. Weissenborn  
Senior Attorney

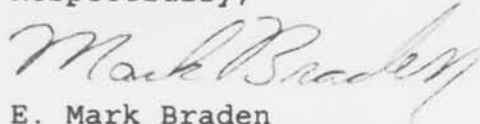
Re: MUR 3638

Dear Ms. Weissenborn:

Enclosed are our clients' responses to the interrogatories and document requests in the above referenced case. Please be advised that the seven entities that you have subpoenaed to produce documents and ordered to submit written answers: Response Dynamics, Inc., Response Dynamics, Inc. d.b.a. American Graphic Design; Response Dynamics, Inc. as the surviving entity after merger with American Telephone Marketing Group, Inc., Direct Response Data Management Service, Inc., The Best Lists, Inc., Mid-American Printing Company, Inc., and Fulfillment Management Services, Inc. are affiliated companies sharing common ownership. Accordingly, we are submitting responses only to those interrogatories and document requests addressed to Response Dynamics, Inc. We are confident that our response provides the information you are seeking.

If after reviewing these responses you have additional questions or desire additional documents, please do not hesitate to promptly contact me. I am confident that once your office understands clearly the nature and details of these transactions, this matter will be understood not to involve any violation of the Act. I am also confident that these documents clearly demonstrate that the relations between Response Dynamics and its political committee customers were an arms length commercial transaction.

Respectfully,

  
E. Mark Braden

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FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

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RESPONSE DYNAMICS, INC.  
RESPONSE TO INTERROGATORIES AND REQUESTS FOR DOCUMENTS

Interrogatory 1.

Describe the present legal status of American Telephone Marketing Group, Inc. ("ATMG"). If this company has merged with, or been sold to, Response Dynamics, Inc., provide the date of the merger or sale and state whether Response Dynamics has assumed the debts and obligations of ATMG. If there has been some other outcome with regard to ATMG, please explain

Response:

On January 1, 1990 American Telephone Marketing Group, Inc. (ATMG) was merged with Response Dynamics, Inc. (RDI). RDI assumed all debts and obligations of ATMG on the date of the merger.

Interrogatory No. 2.

Produce a copy of any merger or sale agreement entered into by Response Dynamics and American Telephone Marketing Group.

Response:

Copies of the merger and sale Agreements entered into by RDI and ATMG are attached. (See Attachment 1).

Interrogatory No. 3.

Describe the legal status of American Graphic Design from 1986 through the present. State whether it is or has ever been a separate corporate entity or whether it has always functioned as a division of Response Dynamics. If there was a change in the legal status of American Graphic Design during this period, describe the change and state when it occurred.

Response:

American Graphic Design (AGD) is an internal graphics design department for RDI. AGD has never been a separate corporate entity and has always functioned as a division of RDI. There have never been any changes to the legal status of AGD.

Interrogatory No. 4.

For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business relationships between and among Response Dynamics, Inc., Direct Response Data Management Service, Inc.,

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American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc., with regard to the provision of direct mail and telecommunication services to clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.

Response:

RDI was established in 1981 to operate as a full-service direct response agency encompassing all facts of commercial, political, and charitable direct response activities with a specialty in fundraising. Direct Response Data Management, Inc. (DRDM), American Telephone Marketing Group, (now a division of RDI) (ATMG), Best Lists, Inc. (BLI), Mid America Printing, Inc. (MAP), and Fulfillment Management Services, Inc. (FMS), and American Graphic Design (a division of RDI) provide direct response services to RDI clients and customers in addition to RDI's access to hundreds of direct mail vendors nationwide. The affiliated companies share common ownership. Any and all phases of direct response marketing are accomplished through RDI and her affiliated entities, including creative services, mail management, mail list procurement, telephone marketing, statistical analysis and tracking, list maintenance, printing (laser and offset) and final package consolidation and mailing.

Interrogatory No. 5.

For the period between January 1, 1986 and December 31, 1992, state whether Response Dynamics ever served as the principal contractor when two or more of the Companies were hired by a single client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this business arrangement.

Response:

When RDI is retained as the direct mail agency for any client, RDI's related entities are always employed to the extent any services they provide can be used by any RDI client.

Interrogatory No. 6.

For the period between January 1, 1986 and December 31, 1992, state whether there were instances in which Response Dynamics had not served as the principal contractor when two or more of the Companies were hired by single client for a particular project or series of projects. If yes, state the

percentage of contracts involving shared clients which provided for this business arrangement.

Response:

There were no instances in which two or more of the companies were hired by a single client for a particular project when RDI was not serving as the direct mail agency to the client.

Interrogatory No. 7.

For the period between January 1, 1986 and December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for each of the other Companies involved to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether separate agreements were signed by the other Companies.

Response:

On occasion and based on the desires of the individual clients, a separate letter of Agreement spelling out the cost items involved in telemarketing may be executed. With the exception of telemarketing services, there were never any separate contracts or Agreements between the RDI related companies and clients that RDI had an agency Agreement with.

Interrogatory No. 8.

- (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of the Companies with regard to extensions of credit to clients shared by the Companies. If there were non-written policies or practices concerning extensions of credit, please describe in detail.

Response:

- (b) There are no written policies or practices concerning extensions of credit. As we produce and deliver to the Post Office completed direct mail packages on behalf of our clients, debt is automatically incurred by the client. There are invoices (debt) for RDI fees, envelopes, letters, other printed material, letter shop services, computer work and other related charges. A typical direct mail prospect letter or a single direct mail package may take as much as three months to mail all test packages based on the availability of mail

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dates for different lists being tested. After fully analyzing all the results from all packages mailed over this ninety day period, we can determine whether or not the package was successful. As different direct mail packages are tested and results are analyzed, new phases for additional mailings are planned. A random selection of 5,000 names may be tested from each of twenty different lists. Each of these twenty lists could have a universe of 100,000 names. The total potential universe of names to mail on these twenty lists would number 2,000,000 names. The initial test of 5,000 names from 20 lists would equal 100,000 names mailed. The roll-out potential would be 2,000,000 names or twenty times the initial test quantity. If the initial mailing cost \$50,000 to mail 100,000 names and all lists were successful and brought in \$75,000 a decision could be made to mail the remaining names on all the lists for a total of 2,000,000 names at a cost of \$1,000,000. The tests would project that this roll-out mailing to 2,000,000 names which would cost \$1,000,000 would bring back \$1,500,000. Therefore, in this instance credit could be extended in the amount of \$1,000,000 since test results project a \$1,500,000 return.

Interrogatory No. 8.

- (b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of the Companies concerning limits on accrued amounts of debt owed to the Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amounts of debt which could be accrued and/or limits on payment time periods, please describe in detail.

Response:

- (b) There were no written policies and/or practices concerning limits on the amounts of debt which could be accrued and/or limits of payment time periods.

Interrogatory No. 9.

- (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.

Response:

- (a) There were no written policies concerning extensions of credit as stated in Number 8 above. All credit extensions related to the potential for the individual clients raised to income from direct mail. This potential is measured by the issue being mailed on, the test data from prospect mailings, the potential size of the house list, and the projected performance of this house list.

Interrogatory No. 9.

- (b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics regarding limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.

Response:

- (b) There were no written policies or practices concerning limits on amount of debt which could be accrued or limits on payment time periods for non-shared clients. If any organization, in the judgment of management, becomes an apparent credit risk no further credit would be granted.

Interrogatory No. 10.

For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of the Companies with regard to billing and payment procedures to be used for clients shared by the Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

Response:

There are no written policies or practices concerning billing and payment procedures other than those written in the Agreements that RDI has with the individual clients.

Interrogatory No. 11.

Produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics between



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January 1, 1986 and December 31, 1992, with regard to billing and payment procedures for clients not shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

Response:

There are no written policies or practices concerning billing and payment procedures. All work is billed by the individual companies that perform the work and that invoice for any work performed is forwarded to the organization ordering the service.

Interrogatory No. 12.

In situations in which clients were shared by the Companies, state whether each Company usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for each Company to send its invoices through Response Dynamics, Inc.

Response:

Each company usually and normally sends invoices directly to the clients. All invoices are reviewed and approved for accuracy through RDI's production department prior to the invoices being forwarded to clients for payment approval. Each company issues an invoice and is paid for the services it provides to the client.

Interrogatory No. 13.

In situations in which clients were shared by the Companies, state whether clients usually and normally made payments directly to each Company. If no, state whether it was usual and normal business practice in such situations for clients to make payments to the other six Companies through Response Dynamics.

Response:

Clients usually and normally make payments directly to each company performing the service and producing the invoice for such service.

Interrogatory No. 14.

For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by Response Dynamics to collect on debts owed by

clients. In situations in which clients were shared by the Companies, state whether it was usual and normal business practice for these steps to be taken by Response Dynamics on behalf of all of the Companies involved in a particular contract.

Response:

RDI and the related companies are paid from proceeds generated by the mailings produced by RDI on behalf of the clients. When mailings produce an amount less than the cost of the mailings, all bills cannot be paid. In situations that losses occur through the mail the steps and business practices for RDI to take are those involving more frequent mailings to the donor house list and more selective prospect mailings to the highest quality names available in order to net maximum dollars from the program to retire debt from previous mailings.

Interrogatory No. 15.

Produce all documents related to the negotiation of the contract signed by Response Dynamics on April 7, 1986 with the National Security Political Action Committee ("NSPAC").

Response:

There are no documents related to the negotiation of the contract signed by RDI with NSPAC other than the actual contract.

Interrogatory No. 16.

Identify the individuals who represented Response Dynamics in the 1986 contract negotiations with NSPAC.

Response:

The individuals who represented RDI in 1986 contract negotiations with NSPAC were David A. Kunko and Ronald A. Kanfer.

Interrogatory No. 17.

Identify the individuals who represented NSPAC in the 1986 negotiations with Response Dynamics.

Response:

The individuals who represented NSPAC was Elizabeth Fedaiy.

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Interrogatory No. 18.

Identify the individuals at Response Dynamics who were primarily responsible for performance of the company's contract with NSPAC.

Response:

The individuals at RDI who primarily responsible for performance of the company's contract with NSPAC were David A. Kunko and Ronald A. Kanfer.

Interrogatory No. 19.

State whether Response Dynamics, as "the Agency," served as the principal contractor for the contract with NSPAC dated April 7, 1986.

Response:

RDI never serves as the "principal contractor." RDI serves as "the agency" as described in each of our Agreements with our clients.

Interrogatory No. 20.

Produce all other written agreements entered into by Response Dynamics with NSPAC and with the other six Companies in carrying out the contract with NSPAC dated April 7, 1986.

Response:

There are no written and oral Agreements entered into by RDI with NSPAC and the six companies other than the Agreements already provided.

Interrogatory No. 21.

If there were no written agreements between Response Dynamics and the other six Companies in carrying out the contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements between or among the Companies related to performance of the contract.

Response:

There are no written Agreements between RDI and the other six companies in carrying out the contract with NSPAC. All companies performed work on behalf of NSPAC in the same manner as they provide services to all other RDI clients.

Interrogatory No. 22.

Produce all documents related to decisions taken between October, 1988 and December 31, 1991 to undertake new direct mail and/or telephone solicitations for NSAPC pursuant to the contract with NSPAC dated April 7, 1986.

Response:

Documents related to decisions taken between October 1988 and December 1991 to undertake new direct mail and/or telephone solicitations are: Attachment 2 (Donor list management report) and Attachment 3 (Donor list performance summary report).

Attachment 2 is an analysis of the NSPAC donor list. This analysis provides all of the critical data needed to determine the value of a donor list. The report shows that there are 121,038 names who have contributed over \$9,700,000 to NSPAC. Over 106,000 donor names have contributed over \$8,800,000 in the last 6 month period from the issue date of this report. Based on the fact that this list of 121,000 names has contributed over \$9,000,000 to NSPAC, it would be reasonable to assume in the direct mail industry that this list would continue to produce many millions more in the future for the NSPAC organization. The decision to undertake new mail or telephone solicitations for NSPAC was based solely on the analysis and performance of the donor list in the possession of NSPAC at 12/16/88.

Attachment 3 is a detailed report of the actual performance of NSPAC's mailing list from the period January 1, 1988 through September 30, 1988. The report shows that the number of actual names mailed continued to increase during the course of the year as new donor names were acquired through prospect mailings. By the end of September the list grew and 75,000 names were being mailed. The bottom line of the report shows that 635,414 letters were mailed to donor names during this period. The 635,414 fund raising letters generated a net income of \$957,643 or over \$1.50 net income per name mailed. Based on performance of the mailing list and the growth of the list to 121,000 names by December, one can multiply \$1.50 x 121,000 names and estimate that \$180,000 in net income could be earned each time this list is mailed on behalf of NSPAC. Based on these logical projections, 5 or 6 mailings to this list could generate enough net income to pay NSPAC's entire debt.

The decision to undertake new mailings and telephone solicitations for NSPAC pursuant to the contract with NSPAC dated April 7, 1986 were based solely on the above data.

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Interrogatory No. 23.

Provide a listing of all direct mail and telemarketing projects carried out by the Companies or NSPAC between October 1, 1988 and December 31, 1991, together with the dates and costs of each project.

Response:

The computer printout listing direct mail packages and telemarketing work carried out by the companies for NSPAC is included as Attachment 4.

Interrogatory No. 24.

Identify the individuals who represented Response Dynamics at discussions and/or negotiations with NSPAC concerning the direct mail and telemarketing projects carried out between October 1, 1988 and December 31, 1991, pursuant to the contract with NSPAC dated April 7, 1986.

Response:

David A. Kunko and Ronald A. Kanfer were the individuals who represented RDI in discussions with NSPAC concerning direct mail and telemarketing projects between October 1, 1988 and December 31, 1991.

Interrogatory No. 25.

Produce copies of all direct mail solicitations produced and mailed pursuant to the Response Dynamics/NSPAC contract dated April 7, 1986.

Response:

Copies of direct mail solicitations produced are included as Attachment 5.

Interrogatory No. 26.

Produce copies of all telemarketing scripts used in performance of the Response Dynamics/NSPAC contract dated April 7, 1986.

Response:

See Attachment 6.



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Interrogatory No. 27.

For the period between October 1, 1988 and December 31, 1991, provide a listing of all services performed by Response Dynamics itself for NSPAC pursuant to the contract with NSPAC dated April 7, 1986.

Response:

For the period between October 1, 1988 and December 31, 1991, RDI provided the same agency services to NSPAC as RDI provided to all other agency clients. These services include copyrighting, package design, artwork, mailing list brokerage services, mailing list recommendations and scheduling, agency purchasing of printing supplies for mailings, envelopes, letters, computer work, laser printing, standard reports such as weekly mailing performance analysis, done file reports, mail drop counts and any other services that were requested that were related to our agency agreement.

Interrogatory No. 28.

For the period between April 7, 1986 and June 31, 1991, produce all invoices sent by Response Dynamics to NSPAC, including both invoices covering work performed or to be performed by Response Dynamics directly and invoices covering work performed or to be performed by the other six Companies or which billings were the responsibility of Response Dynamics. State which of the other six Companies sent invoices directly to NSPAC.

Response:

A listing of invoices covering work performed by RDI and the companies are included as Attachment 7. The six companies sent invoices directly to NSPAC and none were re-billed through Response Dynamics, Inc. All invoices sent by RDI and the six companies to NSPAC cannot be produced since they are in NSPAC's possession.

Interrogatory No. 29.

State whether funds advanced by Response Dynamics for postage, telephone vendors and other fundraising services were always reimbursed before proceeds from fundraising activities were disbursed to NSPAC or to other vendors, pursuant to Section 5(f) of the contract with NSPAC dated April 7, 1986. If no, list and describe the instances in which such reimbursements were not made.

Response:

Funds advanced by RDI for postage or other fundraising services were always reimbursed before any proceeds from fundraising activities were disbursed to NSPAC.

Interrogatory No. 30.

State how much of the debt presently owed Response Dynamics by NSPAC is comprised of unreimbursed advances.

Response:

None of the debt presently owed RDI by NSPAC is comprised of unreimbursed advances.

Interrogatory No. 31.

For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with performance by the seven Companies of the Response Dynamics contract with NSPAC dated April 7, 1986. If there were non-written procedures or practices, please describe in detail.

Response:

Invoices for all work performed by all companies were presented to NSPAC for approval and attached to payment authorization forms. After NSPAC's review and approval these invoices were forwarded to the third party escrow agent as funds became available. A sample payment authorization form is included as Attachment 8.

Interrogatory No. 32.

Produce all documents related to procedures used for authorization by Response Dynamics and NSPAC of payments to vendors by the Washington Intelligence Bureau from the Escrow Fund established pursuant to Section 5(c) of the Response Dynamics contract with NSPAC dated April 7, 1986. If there are non-written procedures or practices, please describe in detail.

Response:

Answer to question number provided in question number 31.

Interrogatory No. 33.

Describe the policies and practices used by Response Dynamics and the Washington Intelligence Bureau to determine

at any particular point in time which vendors were to receive payments for services rendered NSPAC pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986.

Response:

Payments to vendors were made by Washington Intelligence Bureau (WIB) as funds became available from the mail program. Best efforts were always made to pay vendors on or before the due date of any invoices from any vendor.

Interrogatory No. 34.

State whether payments to vendors for services rendered to NSPAC pursuant to the Response Dynamics contract with NSPAC were made by NSPAC and/or the Washington Intelligence Bureau directly to each company. If no, state whether payments to vendors were made through Response Dynamics.

Response:

All payments to RDI and RDI's related companies were made by WIB through the escrow account. No direct payments were made by NSPAC to RDI or RDI related companies.

Interrogatory No. 35.

State whether an Escrow Account was ever established by Response Dynamics, pursuant to Section 5(e) of the contract with NSPAC dated April 7, 1986. If yes, state the date on which the Account was established, and list by payee, amount and date the payments made to each of the Companies from that Account.

Response:

An escrow account was never established by RDI, pursuant to Section 5E of the contract with NSPAC. RDI has never exercised its right to establish such an escrow account for any client handled by RDI.

Interrogatory No. 36.

For the period between October 1, 1988 and December 31, 1991, produce all documents related to measures taken by Response Dynamics to collect on debts owed by NSPAC to Response Dynamics and to the other six Companies. If there were measures taken not addressed in documents, please describe in detail.

Response:

Since NSPAC had no material assets other than NSPAC's access to its mailing list for fund raising appeal, all efforts by RDI were focused on the NSPAC fund raising program to generate more donations and net income from the NSPAC donor list. Attachment 9 lists 78 different direct mail letters appealing to the NSPAC donor list for financial support. All 78 letters were produced and mailed between 1/1/89 and 5/7/91. To the disappointment of both NSPAC and RDI, the performance of these mailings were not consistent with past experience. After two years of intense mailings to this list, it became clear to the management of RDI that it would not be possible to raise the net income required to pay all of NSPAC's debts. RDI felt that there were no alternatives remaining and decided to end the relationship with NSPAC.

Interrogatory No. 37.

Produce all documents related to negotiation of the contract signed by Response Dynamics on November 7, 1989 with the Republican Challengers Committee ("RCC").

Response:

There are no documents related to the negotiation of the contract signed by RDI and RCC other than the actual contract itself.

Interrogatory No. 38.

Identify the individuals who represented Response Dynamics in the 1989 contract negotiation with the RCC.

Response:

The individuals who represented RDI in the 1989 contract negotiations with RCC were David A. Kunko and Ronald A. Kanfer.

Interrogatory No. 39.

Identify the individuals who represented the RCC in the 1989 contract negotiations with Response Dynamics.

Response:

The individual who represented the RCC in 1989 contract negotiations with RDI was Floyd Brown.

Interrogatory No. 40.

Identify the individuals at Response Dynamics who were primarily response or performance of the Company's contract with the RCC dated November 7, 1989.

Response:

The individuals at RDI who were primarily responsible for performance of the companies contract with RCC were David A. Kunko and Ronald A. Kanfer.

Interrogatory No. 41.

State whether Response Dynamics, as "the Agency," served as the principal contractor for the contract with the RCC.

Response:

RDI never serves as "principal contractor." RDI serves as "the agency" as described in each of our Agreements with our clients.

Interrogatory No. 42.

Produce all other written agreements entered into by Response Dynamics with the RCC and with the other six Companies in carrying out the contract with the RCC dated November 7, 1989.

Response:

No other written Agreements were entered into by RDI with RCC and with the other six companies other than the agency contract with RCC dated November 7, 1989.

Interrogatory No. 43.

If there were no written agreements between Response Dynamics and the other six Companies in carrying out the contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements between or among the Companies related to performance of the contract.

Response:

There were no written Agreements between RDI and the other six companies in carrying out the contract with RCC. All companies performed work on behalf of RCC in the same manner as they provided services to all RDI clients.



Interrogatory No. 44.

Provide a listing of all direct mail and telemarketing projects carried out by the Companies for the RCC between November 7, 1989 and December 31, 1992, together with the dates and costs of each project.

Response:

The computer printout listing all direct mail packages and telemarketing work carried out by the companies for RCC is included as Attachment 10.

Interrogatory No. 45.

Produce copies of all direct mail solicitations produced and mailed pursuant to the Response Dynamics/RCC contract dated November 7, 1989.

Response:

Copies of direct mail solicitations produced are included as Attachment 11.

Interrogatory No. 46.

Produce copies of all telemarketing scripts used in performance of the Response Dynamics contract with the RCC dated November 7, 1989.

Response:

Copies of telemarketing scripts used in the performance of the RDI contract with RCC are included as Attachment 12.

Interrogatory No. 47.

For the period between November 7, 1989 and December 31, 1992, provide a listing of all services performed by Response Dynamics itself pursuant to the contract with the RCC dated November 7, 1989.

Response:

For the period between November 7, 1989 and December 31, 1992, RDI provided the same agency services to RCC as RDI provided to all other agency clients. These services include creative copy writing, package design, artwork, mailing list brokerage services, mailing list recommendation and scheduling, agency purchasing services for printing supplies for mailings, envelopes for mailings, letters, computer work, and laser printing. Also standard reports,

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such as weekly mailing performance analysis, donor file reports, mail drop counts as well as other services requested that were related to our agency Agreement.

Interrogatory No. 48.

For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by Response Dynamics to the RCC, including both invoices covering work performed or to be performed by Response Dynamics directly and invoices covering work performed or to be performed the other six Companies for which billings were the responsibility of Response Dynamics. State which of the other six Companies sent their invoices directly to the RCC.

Response:

A listing of invoices covering work performed by RDI are included as Attachment 13. No billings of the other six companies were the responsibility of RDI. All six companies sent invoices directly to RCC and none were re-billed through RDI. All invoices have been returned to RCC from WBI.

Interrogatory No. 49.

State whether funds advanced by Response Dynamics for postage, telephone vendors, and other fundraising services were always reimbursed before proceeds from fundraising activities were disbursed to the RCC or to other vendors, pursuant to Section 5(f) of the contract with the RCC dated November 7, 1989. If no, list and describe the instances in which such reimbursements were not made.

Response:

Funds advanced by RDI for postage or other fundraising services were always reimbursed before proceeds from fundraising activities were disbursed to RCC.

Interrogatory No. 50.

State how much of the debt presently owed Response Dynamics by the RCC is comprised of unreimbursed advances.

Response:

None of the debt presently owed to RDI by RCC is comprised of unreimbursed advances.

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Interrogatory No. 51.

For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with performance by the seven Companies of the Response Dynamics contract with the RCC dated November 7, 1989. If there were non-written procedures or practices, please describe in detail.

Response:

All invoices for all work performed by all companies were presented to RCC for approval and attached to Payment Authorization Forms. After RCC's review and approval, these invoices were forwarded to the third party escrow agent for payment. Invoices were paid by the third party escrow agent as funds became available. A sample Payment Authorization Form is included as Attachment 8.

Interrogatory No. 52.

State whether the Washington Intelligence Bureau served as "Escrowee" for the Response Dynamics/RCC contract dated November 7, 1989. If no, identify the company which provided this service.

Response:

Washington Intelligence Bureau (WIB) served as escrowee for the RDI/RCC contract dated November 7, 1989.

Interrogatory No. 53.

Produce all documents related to procedures used for authorization by Response Dynamics and the RCC of payments to vendors by the Escrowee from the Escrow Fund established pursuant to Section 5(c) of the Response Dynamics contract with the RCC dated November 7, 1989. If there are non-written procedures for practices, please describe in detail.

Response:

Answer same as for question number 52.

Interrogatory No. 54.

Describe the policies and practices used by Response Dynamics and the Escrowee to determine at any particular point in time which vendors were to receive payments for services rendered the RCC pursuant to the Response Dynamics contract with the RCC dated November 7, 1989.

Response:

Payments to vendors were made by WIB as funds became available from the mail program. Best efforts were always made to pay vendors on or before the due date of the vendor invoices.

Interrogatory No. 55.

State whether payments to vendors for services rendered to the RCC pursuant to the Response Dynamics contract with the RCC dated November 7, 1989 were made by the RCC and/or the Washington Intelligence Bureau directly to each company. If no, state whether payments to vendors were made through Response Dynamics.

Response:

All payments to direct mail fund raising vendors including RDI and RDI's related companies were made by WIB the escrow agent through the escrow account. No direct payments were made by RCC to RDI or RDI related companies.

Interrogatory No. 56.

State whether an Escrow Account was ever established by Response Dynamics pursuant to Section 5(e) of the contract with the RCC dated November 7, 1989. If yes, state the date on which the Account was established and list by payee, amount and date, the payments made to each of the Companies from that Account.

Response:

An escrow account was never established by RDI, pursuant to Section 5E of the contract with RCC. RDI has never exercised its right to establish such an escrow account for any client ever handled by RDI.

Interrogatory No. 57.

For the period between November 7, 1989 and December 31, 1992, produce all documents related to measures taken by Response Dynamics to collect on debts owed by the RCC to Response Dynamics and to the other six Companies. If there were measures taken which are not addressed in documents, please describe in detail.

Response:

Since RCC's only material asset was the RCC list of donor names, all efforts to collect amounts due were focused on

the RCC mail program to generate additional net income from the RCC donor list through future mailings. Attachment 10 lists 37 different direct mail letters appealing to the RCC donor list for additional financial support. Each of these mailings is a separate and new attempt to cause additional net income to be generated for RCC to pay any outstanding direct mail bills resulting from our Agreement with RCC.

Interrogatory No. 58.

For the period between April, 1986 and December, 1992, produce all contracts or other agreements entered into by Response Dynamics with clients other than NSPAC and the RCC for the provision of direct mail and/or telecommunications services.

Response:

Agreements entered into by RDI with clients other than NSPAC and RCC between April 1986 and 1992 are included as Attachment 14.

Interrogatory No. 59.

For the period April, 1986 and December, 1992, produce all documents related to extensions of credit to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and/or telecommunications services.

Response:

Attachment 15 includes year-end aging summaries listing total amounts unpaid and due each of the companies from each agency client. There are six separate summary reports beginning with the year-end 12/31/87 through the year-end 12/31/92.

Interrogatory No. 60.

State the highest amount of debt owed Response Dynamics ever accrued by each of the clients whose contracts are provided in response to Request 58 above, and whether and when Response Dynamics made the determination not to extend further credit to each of these clients.

Response:

Report data is not available for each day of the period April 1986 through December 1992. However, using the year-end aging reports listed above on Attachment 16 we can



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determine the high debt for each client as the 12/31 year-end date for each of RDI's clients.

The determination not to extend further credit is never made when direct mail escrow accounts are used. Instead, a decision is made to stop work/mail until we believe a new fund raising idea will work.

Interrogatory No. 61.

Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for Agency commissions on list rentals or rights to list rental income as compensation.

Response:

Clients of RDI besides RCC whose contracts have not provided for agency commissions on list rentals or all rights to list rental income as compensation include the following:

American Association for International Aging  
Americans for a Balanced Budget  
American Indian Heritage Foundation  
Campaign America  
Christian Emergency Relief Team  
Citizens for America  
Center for Intelligence Studies  
International Medical Corps.  
National Center for Public Policy Research  
National Flag Foundation  
Security and Intelligence Foundation  
Support Our Aging Religious  
The Ehrenborg Foundation  
Third World Prosthetic Foundation

Interrogatory No. 62.

Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for sole Agency ownership of all lists created under their contracts.

Response:

No agency contracts provide sole agency list ownership.

Interrogatory No. 63.

Identify all clients of Response Dynamics besides the RCC whose contracts have provided for unlimited use by the client, without payment, of lists created pursuant to their contracts.

Response:

Clients of RDI besides RCC whose contracts have provided for unlimited use by the client, without payment, of lists created pursuant to their contracts include the following:

American Association for International Aging  
American Citizens for Political Action  
American Conservative Union  
American Defense Committee  
American Defense Institute  
American Indian Heritage Foundation  
Americans for a Balanced Budget  
Anne Frank Institute  
Campaign America  
Center for Intelligence Studies  
Children's Hospice International  
Children's Survival Fund  
Christian Emergency Relief Team  
Citizens for America  
College Republican National Committee  
Congressional Majority Committee  
Conservative Victory Committee  
Council for Inter-American Security  
International Medical Corp.  
Media Research Center  
National Center for Public Policy Research  
National Flag Foundation  
National Intelligence Center (a project of NCPPR)  
Security and Intelligence Foundation  
Selous Foundation  
Senate Victory Fund (a project of ACPA)  
Support Our Aging Religious  
The Mercy Fund (AF, BTL, FF, NCN)

Interrogatory No. 64.

**Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for yearly cost of living adjustments**

Response:

Clients of RDI besides RCC whose contracts have not provided for a yearly cost of living adjustments including the following:

American Association for International Aging  
American Citizens for Political Action  
American Conservative Union  
American Defense Committee

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American Defense Institute  
American Indian Heritage Foundation  
Americans for a Balanced Budget  
Campaign America  
Center for Intelligence Studies  
Children's Hospice International  
Children's Survival Fund  
Christian Emergency Relief Team  
Citizens for America  
College Republican National Committee  
Conservative Victory Committee  
David Livingstone Missionary Foundation  
International Medical Corp.  
Media Research Center  
National Center for Public Policy Foundation  
National Flag Foundation  
National Intelligence Center (a project of NCPPR)  
Security and Intelligence Foundation  
Senate Victory Fund (a project of ACPA)  
Support Our Aging Religious  
The Ehrenborg Foundation  
The Mercy Fund (AF, BTL, FF, NCN)  
Third World Prosthetic Foundation

Interrogatory No. 65.

State the Companies' joint average client debt to total income ratio for each business year from 1988 to 1992.

Response:

See Attachment 16.

Interrogatory No. 66.

State Response Dynamics' average client debt to total income ratio for each business year from 1988 to 1992.

Response:

See Attachment 16.

Interrogatory No. 67.

State Response Dynamics' client debt to total income ratio for each of the clients identified in response to Request 58.

Response:

See Attachment 16.

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Interrogatory No. 68.

Produce all documents related to:

- (a) Calculation of the debt to total income ratios resulting from the Companies' joint performance of the April 7, 1986 contract with NSPAC and from Response Dynamics' own performance under this contract.
- (b) Calculations of the average debt to total income ratio of the seven Companies jointly and of Response Dynamics alone
- (c) Calculations of the Companies' joint debt to total income ratios related to clients named in response to Request 58 above.
- (d) Calculations of Response Dynamics' debt to total income ratios related to clients named in response to Request 58 above.

Response:

See Attachment 16.

Interrogatory No. 69.

State all categories of income available to Response Dynamics from use of the Americans for Bush mailing list.

Response:

- (a) First generation list income (actual rental income from the AFB mailing list)
- (b) Second generation rental income (increase in the value and size of all other RDI client lists that obtain new donors from their mailings to the AFB list).
- (c) An overall across the board increase in business volume for RDI and all related companies due to the increase in size of all client mailings for those who have mailed the AFB list.

Interrogatory No. 70.

State by category of income and year the amounts of gross and net income received by Response Dynamics from use of the Americans for Bush mailing list.

Response:

(a) AFB mailing list rental income:

1988	\$ 51,526.11
1989	273,207.63
1990	36,360.32
1991	60,303.00
1992	90,102.45
1993	<u>73,785.41</u>
Total	\$585,284.92

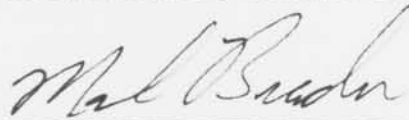
(b) Estimated second generational list rental: Total of 4 million names rented at 2% = 80,000 names acquired and added to second generation lists. This is a conversion rate of 66% or 2/3 of the AFB list being added to other agency client lists. Estimated additional income for the six year period would be 2/3 of the amount generated by the AFB list or \$400,000.

(c) Increase in business for all RDI companies as a result of the increase in size of all client mailing lists who have mailed the AFB list would be calculated by estimating the total number of direct mail pieces produced that would not otherwise be produced if the AFB list never existed.

Estimation: AFB list direct rentals = 4,000,000 extra direct mail pieces produced. Second generation rentals = 2,600,000 extra direct mail pieces produced. Total extra direct mail pieces produced = 6,600,000. Estimated additional revenue to RDI and related companies from the usage of the AFB mailing list is over \$2,500,000.

Respectfully submitted,

By:



William H Schweitzer  
E. Mark Braden  
BAKER & HOSTETLER  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 861-1500



To the best of my knowledge, information and belief, the foregoing Response to the Federal Election Commissions Interrogatories and Request for Documents are true and correct with respect to Response Dynamics, Inc., Response Dynamics, Inc. d.b.a. American Graphic Design; Response Dynamics, Inc. as the surviving entity after merger with American Telephone Marketing Group, Inc., Direct Response Data Management Service, Inc., The Best Lists, Inc., Mid-American Printing Company, Inc., and Fulfillment Management Services, Inc. for the period January 1, 1986 to December 31, 1992.

By: Ronald Kunkle  
~~David A. Kunkle~~ Ronald A. Kunkle  
Response Dynamics, Inc.  
2070 Chain Bridge Road, Suite 400  
Vienna, VA 22182

Subscribed and Sworn  
before me this 7<sup>th</sup> day  
of December, 1994

Debbie Anne Longo  
Notary Public

RESPONSE DYNAMICS, INC.  
RESPONSE TO INTERROGATORIES AND REQUESTS FOR DOCUMENTS

Interrogatory 1.

Describe the present legal status of American Telephone Marketing Group, Inc. ("ATMG"). If this company has merged with, or been sold to, Response Dynamics, Inc., provide the date of the merger or sale and state whether Response Dynamics has assumed the debts and obligations of ATMG. If there has been some other outcome with regard to ATMG, please explain

Response:

On January 1, 1990 American Telephone Marketing Group, Inc. (ATMG) was merged with Response Dynamics, Inc. (RDI). RDI assumed all debts and obligations of ATMG on the date of the merger.

Interrogatory No. 2.

Produce a copy of any merger or sale agreement entered into by Response Dynamics and American Telephone Marketing Group.

Response:

Copies of the merger and sale Agreements entered into by RDI and ATMG are attached. (See Attachment 1).

Interrogatory No. 3.

Describe the legal status of American Graphic Design from 1986 through the present. State whether it is or has ever been a separate corporate entity or whether it has always functioned as a division of Response Dynamics. If there was a change in the legal status of American Graphic Design during this period, describe the change and state when it occurred.

Response:

American Graphic Design (AGD) is an internal graphics design department for RDI. AGD has never been a separate corporate entity and has always functioned as a division of RDI. There have never been any changes to the legal status of AGD.

Interrogatory No. 4.

For the period from January 1, 1986 to December 31, 1992, produce all documents which reflect the usual and normal business relationships between and among Response Dynamics, Inc., Direct Response Data Management Service, Inc.,

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American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-America Printing Company, Inc., and Fulfillment Management Services, Inc., with regard to the provision of direct mail and telecommunication services to clients shared by all or some of the Companies. If there were non-written procedures or practices concerning these business relationships, please describe in detail.

Response:

RDI was established in 1981 to operate as a full-service direct response agency encompassing all facts of commercial, political, and charitable direct response activities with a specialty in fundraising. Direct Response Data Management, Inc. (DRDM), American Telephone Marketing Group, (now a division of RDI) (ATMG), Best Lists, Inc. (BLI), Mid America Printing, Inc. (MAP), and Fulfillment Management Services, Inc. (FMS), and American Graphic Design (a division of RDI) provide direct response services to RDI clients and customers in addition to RDI's access to hundreds of direct mail vendors nationwide. The affiliated companies share common ownership. Any and all phases of direct response marketing are accomplished through RDI and her affiliated entities, including creative services, mail management, mail list procurement, telephone marketing, statistical analysis and tracking, list maintenance, printing (laser and offset) and final package consolidation and mailing.

Interrogatory No. 5.

For the period between January 1, 1986 and December 31, 1992, state whether Response Dynamics ever served as the principal contractor when two or more of the Companies were hired by a single client for a particular project or series of projects. If yes, state the percentage of contracts involving shared clients which provided for this business arrangement.

Response:

When RDI is retained as the direct mail agency for any client, RDI's related entities are always employed to the extent any services they provide can be used by any RDI client.

Interrogatory No. 6.

For the period between January 1, 1986 and December 31, 1992, state whether there were instances in which Response Dynamics had not served as the principal contractor when two or more of the Companies were hired by single client for a particular project or series of projects. If yes, state the

percentage of contracts involving shared clients which provided for this business arrangement.

Response:

There were no instances in which two or more of the companies were hired by a single client for a particular project when RDI was not serving as the direct mail agency to the client.

Interrogatory No. 7.

For the period between January 1, 1986 and December 31, 1992, state whether it was the usual and normal practice, in those situations in which Response Dynamics served as the principal contractor, for each of the other Companies involved to sign a separate contract or letter of agreement with the client. List each such situation. Describe the circumstances which would have determined whether separate agreements were signed by the other Companies.

Response:

On occasion and based on the desires of the individual clients, a separate letter of Agreement spelling out the cost items involved in telemarketing may be executed. With the exception of telemarketing services, there were never any separate contracts or Agreements between the RDI related companies and clients that RDI had an agency Agreement with.

Interrogatory No. 8.

- (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of the Companies with regard to extensions of credit to clients shared by the Companies. If there were non-written policies or practices concerning extensions of credit, please describe in detail.

Response:

- (b) There are no written policies or practices concerning extensions of credit. As we produce and deliver to the Post Office completed direct mail packages on behalf of our clients, debt is automatically incurred by the client. There are invoices (debt) for RDI fees, envelopes, letters, other printed material, letter shop services, computer work and other related charges. A typical direct mail prospect letter or a single direct mail package may take as much as three months to mail all test packages based on the availability of mail

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dates for different lists being tested. After fully analyzing all the results from all packages mailed over this ninety day period, we can determine whether or not the package was successful. As different direct mail packages are tested and results are analyzed, new phases for additional mailings are planned. A random selection of 5,000 names may be tested from each of twenty different lists. Each of these twenty lists could have a universe of 100,000 names. The total potential universe of names to mail on these twenty lists would number 2,000,000 names. The initial test of 5,000 names from 20 lists would equal 100,000 names mailed. The roll-out potential would be 2,000,000 names or twenty times the initial test quantity. If the initial mailing cost \$50,000 to mail 100,000 names and all lists were successful and brought in \$75,000 a decision could be made to mail the remaining names on all the lists for a total of 2,000,000 names at a cost of \$1,000,000. The tests would project that this roll-out mailing to 2,000,000 names which would cost \$1,000,000 would bring back \$1,500,000. Therefore, in this instance credit could be extended in the amount of \$1,000,000 since test results project a \$1,500,000 return.

Interrogatory No. 8.

- (b) For the period between January 1, 1986 and December 31, 1992, produce all documents related to policies and/or practices of the Companies concerning limits on accrued amounts of debt owed to the Companies and/or limits on payment time periods for shared clients. If there were non-written policies and/or practices concerning limits on the amounts of debt which could be accrued and/or limits on payment time periods, please describe in detail.

Response:

- (b) There were no written policies and/or practices concerning limits on the amounts of debt which could be accrued and/or limits of payment time periods.

Interrogatory No. 9.

- (a) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics with regard to extensions of credit to clients not shared with other Companies. If there were non-written policies and/or practices concerning extensions of credit, please describe in detail.



Response:

- (a) There were no written policies concerning extensions of credit as stated in Number 8 above. All credit extensions related to the potential for the individual clients raised to income from direct mail. This potential is measured by the issue being mailed on, the test data from prospect mailings, the potential size of the house list, and the projected performance of this house list.

Interrogatory No. 9.

- (b) For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics regarding limits on accrued amounts of debt owed by clients not shared with other Companies and/or limits on payment time periods. If there were non-written policies and/or practices concerning limits on the amount of debt which could be accrued and/or limits on payment time periods, please describe in detail.

Response:

- (b) There were no written policies or practices concerning limits on amount of debt which could be accrued or limits on payment time periods for non-shared clients. If any organization, in the judgment of management, becomes an apparent credit risk no further credit would be granted.

Interrogatory No. 10.

For the period between January 1, 1986 and December 31, 1992, produce all documents which set forth the usual and normal policies and/or practices of the Companies with regard to billing and payment procedures to be used for clients shared by the Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

Response:

There are no written policies or practices concerning billing and payment procedures other than those written in the Agreements that RDI has with the individual clients.

Interrogatory No. 11.

Produce all documents which set forth the usual and normal policies and/or practices of Response Dynamics between

January 1, 1986 and December 31, 1992, with regard to billing and payment procedures for clients not shared with other Companies. If there were non-written policies and/or practices concerning billing and payment procedures, please describe in detail.

Response:

There are no written policies or practices concerning billing and payment procedures. All work is billed by the individual companies that perform the work and that invoice for any work performed is forwarded to the organization ordering the service.

Interrogatory No. 12.

In situations in which clients were shared by the Companies, state whether each Company usually and normally sent invoices directly to such shared clients. If no, state whether it was usual and normal business practice in such situations for each Company to send its invoices through Response Dynamics, Inc.

Response:

Each company usually and normally sends invoices directly to the clients. All invoices are reviewed and approved for accuracy through RDI's production department prior to the invoices being forwarded to clients for payment approval. Each company issues an invoice and is paid for the services it provides to the client.

Interrogatory No. 13.

In situations in which clients were shared by the Companies, state whether clients usually and normally made payments directly to each Company. If no, state whether it was usual and normal business practice in such situations for clients to make payments to the other six Companies through Response Dynamics.

Response:

Clients usually and normally make payments directly to each company performing the service and producing the invoice for such service.

Interrogatory No. 14.

For the period between April 7, 1986 and December 31, 1992, produce all documents which set forth the usual and normal steps taken by Response Dynamics to collect on debts owed by

clients. In situations in which clients were shared by the Companies, state whether it was usual and normal business practice for these steps to be taken by Response Dynamics on behalf of all of the Companies involved in a particular contract.

Response:

RDI and the related companies are paid from proceeds generated by the mailings produced by RDI on behalf of the clients. When mailings produce an amount less than the cost of the mailings, all bills cannot be paid. In situations that losses occur through the mail the steps and business practices for RDI to take are those involving more frequent mailings to the donor house list and more selective prospect mailings to the highest quality names available in order to net maximum dollars from the program to retire debt from previous mailings.

Interrogatory No. 15.

Produce all documents related to the negotiation of the contract signed by Response Dynamics on April 7, 1986 with the National Security Political Action Committee ("NSPAC").

Response:

There are no documents related to the negotiation of the contract signed by RDI with NSPAC other than the actual contract.

Interrogatory No. 16.

Identify the individuals who represented Response Dynamics in the 1986 contract negotiations with NSPAC.

Response:

The individuals who represented RDI in 1986 contract negotiations with NSPAC were David A. Kunko and Ronald A. Kanfer.

Interrogatory No. 17.

Identify the individuals who represented NSPAC in the 1986 negotiations with Response Dynamics.

Response:

The individuals who represented NSPAC was Elizabeth Fedaiy.

Interrogatory No. 18.

Identify the individuals at Response Dynamics who were primarily responsible for performance of the company's contract with NSPAC.

Response:

The individuals at RDI who primarily responsible for performance of the company's contract with NSPAC were David A. Kunko and Ronald A. Kanfer.

Interrogatory No. 19.

State whether Response Dynamics, as "the Agency," served as the principal contractor for the contract with NSPAC dated April 7, 1986.

Response:

RDI never serves as the "principal contractor." RDI serves as "the agency" as described in each of our Agreements with our clients.

Interrogatory No. 20.

Produce all other written agreements entered into by Response Dynamics with NSPAC and with the other six Companies in carrying out the contract with NSPAC dated April 7, 1986.

Response:

There are no written and oral Agreements entered into by RDI with NSPAC and the six companies other than the Agreements already provided.

Interrogatory No. 21.

If there were no written agreements between Response Dynamics and the other six Companies in carrying out the contract with NSPAC dated April 7, 1986, provide detailed descriptions of any oral agreements between or among the Companies related to performance of the contract.

Response:

There are no written Agreements between RDI and the other six companies in carrying out the contract with NSPAC. All companies performed work on behalf of NSPAC in the same manner as they provide services to all other RDI clients.

Interrogatory No. 22.

Produce all documents related to decisions taken between October, 1988 and December 31, 1991 to undertake new direct mail and/or telephone solicitations for NSAPC pursuant to the contract with NSPAC dated April 7, 1986.

Response:

Documents related to decisions taken between October 1988 and December 1991 to undertake new direct mail and/or telephone solicitations are: Attachment 2 (Donor list management report) and Attachment 3 (Donor list performance summary report).

Attachment 2 is an analysis of the NSPAC donor list. This analysis provides all of the critical data needed to determine the value of a donor list. The report shows that there are 121,038 names who have contributed over \$9,700,000 to NSPAC. Over 106,000 donor names have contributed over \$8,800,000 in the last 6 month period from the issue date of this report. Based on the fact that this list of 121,000 names has contributed over \$9,000,000 to NSPAC, it would be reasonable to assume in the direct mail industry that this list would continue to produce many millions more in the future for the NSPAC organization. The decision to undertake new mail or telephone solicitations for NSPAC was based solely on the analysis and performance of the donor list in the possession of NSPAC at 12/16/88.

Attachment 3 is a detailed report of the actual performance of NSPAC's mailing list from the period January 1, 1988 through September 30, 1988. The report shows that the number of actual names mailed continued to increase during the course of the year as new donor names were acquired through prospect mailings. By the end of September the list grew and 75,000 names were being mailed. The bottom line of the report shows that 635,414 letters were mailed to donor names during this period. The 635,414 fund raising letters generated a net income of \$957,643 or over \$1.50 net income per name mailed. Based on performance of the mailing list and the growth of the list to 121,000 names by December, one can multiply \$1.50 x 121,000 names and estimate that \$180,000 in net income could be earned each time this list is mailed on behalf of NSPAC. Based on these logical projections, 5 or 6 mailings to this list could generate enough net income to pay NSPAC's entire debt.

The decision to undertake new mailings and telephone solicitations for NSPAC pursuant to the contract with NSPAC dated April 7, 1986 were based solely on the above data.



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Interrogatory No. 23.

Provide a listing of all direct mail and telemarketing projects carried out by the Companies or NSPAC between October 1, 1988 and December 31, 1991, together with the dates and costs of each project.

Response:

The computer printout listing direct mail packages and telemarketing work carried out by the companies for NSPAC is included as Attachment 4.

Interrogatory No. 24.

Identify the individuals who represented Response Dynamics at discussions and/or negotiations with NSPAC concerning the direct mail and telemarketing projects carried out between October 1, 1988 and December 31, 1991, pursuant to the contract with NSPAC dated April 7, 1986.

Response:

David A. Kunko and Ronald A. Kanfer were the individuals who represented RDI in discussions with NSPAC concerning direct mail and telemarketing projects between October 1, 1988 and December 31, 1991.

Interrogatory No. 25.

Produce copies of all direct mail solicitations produced and mailed pursuant to the Response Dynamics/NSPAC contract dated April 7, 1986.

Response:

Copies of direct mail solicitations produced are included as Attachment 5.

Interrogatory No. 26.

Produce copies of all telemarketing scripts used in performance of the Response Dynamics/NSPAC contract dated April 7, 1986.

Response:

See Attachment 6.

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Interrogatory No. 27.

For the period between October 1, 1988 and December 31, 1991, provide a listing of all services performed by Response Dynamics itself for NSPAC pursuant to the contract with NSPAC dated April 7, 1986.

Response:

For the period between October 1, 1988 and December 31, 1991, RDI provided the same agency services to NSPAC as RDI provided to all other agency clients. These services include copyrighting, package design, artwork, mailing list brokerage services, mailing list recommendations and scheduling, agency purchasing of printing supplies for mailings, envelopes, letters, computer work, laser printing, standard reports such as weekly mailing performance analysis, done file reports, mail drop counts and any other services that were requested that were related to our agency agreement.

Interrogatory No. 28.

For the period between April 7, 1986 and June 31, 1991, produce all invoices sent by Response Dynamics to NSPAC, including both invoices covering work performed or to be performed by Response Dynamics directly and invoices covering work performed or to be performed by the other six Companies or which billings were the responsibility of Response Dynamics. State which of the other six Companies sent invoices directly to NSPAC.

Response:

A listing of invoices covering work performed by RDI and the companies are included as Attachment 7. The six companies sent invoices directly to NSPAC and none were re-billed through Response Dynamics, Inc. All invoices sent by RDI and the six companies to NSPAC cannot be produced since they are in NSPAC's possession.

Interrogatory No. 29.

State whether funds advanced by Response Dynamics for postage, telephone vendors and other fundraising services were always reimbursed before proceeds from fundraising activities were disbursed to NSPAC or to other vendors, pursuant to Section 5(f) of the contract with NSPAC dated April 7, 1986. If no, list and describe the instances in which such reimbursements were not made.

Response:

Funds advanced by RDI for postage or other fundraising services were always reimbursed before any proceeds from fundraising activities were disbursed to NSPAC.

Interrogatory No. 30.

State how much of the debt presently owed Response Dynamics by NSPAC is comprised of unreimbursed advances.

Response:

None of the debt presently owed RDI by NSPAC is comprised of unreimbursed advances.

Interrogatory No. 31.

For the period between April 7, 1986 and December 31, 1991, produce all documents related to the collection and payment procedures used in connection with performance by the seven Companies of the Response Dynamics contract with NSPAC dated April 7, 1986. If there were non-written procedures or practices, please describe in detail.

Response:

Invoices for all work performed by all companies were presented to NSPAC for approval and attached to payment authorization forms. After NSPAC's review and approval these invoices were forwarded to the third party escrow agent as funds became available. A sample payment authorization form is included as Attachment 8.

Interrogatory No. 32.

Produce all documents related to procedures used for authorization by Response Dynamics and NSPAC of payments to vendors by the Washington Intelligence Bureau from the Escrow Fund established pursuant to Section 5(c) of the Response Dynamics contract with NSPAC dated April 7, 1986. If there are non-written procedures or practices, please describe in detail.

Response:

Answer to question number provided in question number 31.

Interrogatory No. 33.

Describe the policies and practices used by Response Dynamics and the Washington Intelligence Bureau to determine

at any particular point in time which vendors were to receive payments for services rendered NSPAC pursuant to the Response Dynamics contract with NSPAC dated April 7, 1986.

Response:

Payments to vendors were made by Washington Intelligence Bureau (WIB) as funds became available from the mail program. Best efforts were always made to pay vendors on or before the due date of any invoices from any vendor.

Interrogatory No. 34.

State whether payments to vendors for services rendered to NSPAC pursuant to the Response Dynamics contract with NSPAC were made by NSPAC and/or the Washington Intelligence Bureau directly to each company. If no, state whether payments to vendors were made through Response Dynamics.

Response:

All payments to RDI and RDI's related companies were made by WIB through the escrow account. No direct payments were made by NSPAC to RDI or RDI related companies.

Interrogatory No. 35.

State whether an Escrow Account was ever established by Response Dynamics, pursuant to Section 5(e) of the contract with NSPAC dated April 7, 1986. If yes, state the date on which the Account was established, and list by payee, amount and date the payments made to each of the Companies from that Account.

Response:

An escrow account was never established by RDI, pursuant to Section 5E of the contract with NSPAC. RDI has never exercised its right to establish such an escrow account for any client handled by RDI.

Interrogatory No. 36.

For the period between October 1, 1988 and December 31, 1991, produce all documents related to measures taken by Response Dynamics to collect on debts owed by NSPAC to Response Dynamics and to the other six Companies. If there were measures taken not addressed in documents, please describe in detail.

Response:

Since NSPAC had no material assets other than NSPAC's access to its mailing list for fund raising appeal, all efforts by RDI were focused on the NSPAC fund raising program to generate more donations and net income from the NSPAC donor list. Attachment 9 lists 78 different direct mail letters appealing to the NSPAC donor list for financial support. All 78 letters were produced and mailed between 1/1/89 and 5/7/91. To the disappointment of both NSPAC and RDI, the performance of these mailings were not consistent with past experience. After two years of intense mailings to this list, it became clear to the management of RDI that it would not be possible to raise the net income required to pay all of NSPAC's debts. RDI felt that there were no alternatives remaining and decided to end the relationship with NSPAC.

Interrogatory No. 37.

Produce all documents related to negotiation of the contract signed by Response Dynamics on November 7, 1989 with the Republican Challengers Committee ("RCC").

Response:

There are no documents related to the negotiation of the contract signed by RDI and RCC other than the actual contract itself.

Interrogatory No. 38.

Identify the individuals who represented Response Dynamics in the 1989 contract negotiation with the RCC.

Response:

The individuals who represented RDI in the 1989 contract negotiations with RCC were David A. Kunko and Ronald A. Kanfer.

Interrogatory No. 39.

Identify the individuals who represented the RCC in the 1989 contract negotiations with Response Dynamics.

Response:

The individual who represented the RCC in 1989 contract negotiations with RDI was Floyd Brown.



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Interrogatory No. 40.

Identify the individuals at Response Dynamics who were primarily response or performance of the Company's contract with the RCC dated November 7, 1989.

Response:

The individuals at RDI who were primarily responsible for performance of the companies contract with RCC were David A. Kunko and Ronald A. Kanfer.

Interrogatory No. 41.

State whether Response Dynamics, as "the Agency," served as the principal contractor for the contract with the RCC.

Response:

RDI never serves as "principal contractor." RDI serves as "the agency" as described in each of our Agreements with our clients.

Interrogatory No. 42.

Produce all other written agreements entered into by Response Dynamics with the RCC and with the other six Companies in carrying out the contract with the RCC dated November 7, 1989.

Response:

No other written Agreements were entered into by RDI with RCC and with the other six companies other than the agency contract with RCC dated November 7, 1989.

Interrogatory No. 43.

If there were no written agreements between Response Dynamics and the other six Companies in carrying out the contract with the RCC dated November 7, 1989, provide detailed descriptions of any oral agreements between or among the Companies related to performance of the contract.

Response:

There were no written Agreements between RDI and the other six companies in carrying out the contract with RCC. All companies performed work on behalf of RCC in the same manner as they provided services to all RDI clients.

Interrogatory No. 44.

Provide a listing of all direct mail and telemarketing projects carried out by the Companies for the RCC between November 7, 1989 and December 31, 1992, together with the dates and costs of each project.

Response:

The computer printout listing all direct mail packages and telemarketing work carried out by the companies for RCC is included as Attachment 10.

Interrogatory No. 45.

Produce copies of all direct mail solicitations produced and mailed pursuant to the Response Dynamics/RCC contract dated November 7, 1989.

Response:

Copies of direct mail solicitations produced are included as Attachment 11.

Interrogatory No. 46.

Produce copies of all telemarketing scripts used in performance of the Response Dynamics contract with the RCC dated November 7, 1989.

Response:

Copies of telemarketing scripts used in the performance of the RDI contract with RCC are included as Attachment 12.

Interrogatory No. 47.

For the period between November 7, 1989 and December 31, 1992, provide a listing of all services performed by Response Dynamics itself pursuant to the contract with the RCC dated November 7, 1989.

Response:

For the period between November 7, 1989 and December 31, 1992, RDI provided the same agency services to RCC as RDI provided to all other agency clients. These services include creative copy writing, package design, artwork, mailing list brokerage services, mailing list recommendation and scheduling, agency purchasing services for printing supplies for mailings, envelopes for mailings, letters, computer work, and laser printing. Also standard reports,

such as weekly mailing performance analysis, donor file reports, mail drop counts as well as other services requested that were related to our agency Agreement.

Interrogatory No. 48.

For the period between November 7, 1989 and December 31, 1992, produce all invoices sent by Response Dynamics to the RCC, including both invoices covering work performed or to be performed by Response Dynamics directly and invoices covering work performed or to be performed the other six Companies for which billings were the responsibility of Response Dynamics. State which of the other six Companies sent their invoices directly to the RCC.

Response:

A listing of invoices covering work performed by RDI are included as Attachment 13. No billings of the other six companies were the responsibility of RDI. All six companies sent invoices directly to RCC and none were re-billed through RDI. All invoices have been returned to RCC from WBI.

Interrogatory No. 49.

State whether funds advanced by Response Dynamics for postage, telephone vendors, and other fundraising services were always reimbursed before proceeds from fundraising activities were disbursed to the RCC or to other vendors, pursuant to Section 5(f) of the contract with the RCC dated November 7, 1989. If no, list and describe the instances in which such reimbursements were not made.

Response:

Funds advanced by RDI for postage or other fundraising services were always reimbursed before proceeds from fundraising activities were disbursed to RCC.

Interrogatory No. 50.

State how much of the debt presently owed Response Dynamics by the RCC is comprised of unreimbursed advances.

Response:

None of the debt presently owed to RDI by RCC is comprised of unreimbursed advances.

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Interrogatory No. 51.

For the period between November 7, 1989 and December 31, 1992, produce all documents related to the collection and payment procedures used in connection with performance by the seven Companies of the Response Dynamics contract with the RCC dated November 7, 1989. If there were non-written procedures or practices, please describe in detail.

Response:

All invoices for all work performed by all companies were presented to RCC for approval and attached to Payment Authorization Forms. After RCC's review and approval, these invoices were forwarded to the third party escrow agent for payment. Invoices were paid by the third party escrow agent as funds became available. A sample Payment Authorization Form is included as Attachment 8.

Interrogatory No. 52.

State whether the Washington Intelligence Bureau served as "Escrowee" for the Response Dynamics/RCC contract dated November 7, 1989. If no, identify the company which provided this service.

Response:

Washington Intelligence Bureau (WIB) served as escrowee for the RDI/RCC contract dated November 7, 1989.

Interrogatory No. 53.

Produce all documents related to procedures used for authorization by Response Dynamics and the RCC of payments to vendors by the Escrowee from the Escrow Fund established pursuant to Section 5(c) of the Response Dynamics contract with the RCC dated November 7, 1989. If there are non-written procedures for practices, please describe in detail.

Response:

Answer same as for question number 52.

Interrogatory No. 54.

Describe the policies and practices used by Response Dynamics and the Escrowee to determine at any particular point in time which vendors were to receive payments for services rendered the RCC pursuant to the Response Dynamics contract with the RCC dated November 7, 1989.

Response:

Payments to vendors were made by WIB as funds became available from the mail program. Best efforts were always made to pay vendors on or before the due date of the vendor invoices.

Interrogatory No. 55.

State whether payments to vendors for services rendered to the RCC pursuant to the Response Dynamics contract with the RCC dated November 7, 1989 were made by the RCC and/or the Washington Intelligence Bureau directly to each company. If no, state whether payments to vendors were made through Response Dynamics.

Response:

All payments to direct mail fund raising vendors including RDI and RDI's related companies were made by WIB the escrow agent through the escrow account. No direct payments were made by RCC to RDI or RDI related companies.

Interrogatory No. 56.

State whether an Escrow Account was ever established by Response Dynamics pursuant to Section 5(e) of the contract with the RCC dated November 7, 1989. If yes, state the date on which the Account was established and list by payee, amount and date, the payments made to each of the Companies from that Account.

Response:

An escrow account was never established by RDI, pursuant to Section 5E of the contract with RCC. RDI has never exercised its right to establish such an escrow account for any client ever handled by RDI.

Interrogatory No. 57.

For the period between November 7, 1989 and December 31, 1992, produce all documents related to measures taken by Response Dynamics to collect on debts owed by the RCC to Response Dynamics and to the other six Companies. If there were measures taken which are not addressed in documents, please describe in detail.

Response:

Since RCC's only material asset was the RCC list of donor names, all efforts to collect amounts due were focused on



the RCC mail program to generate additional net income from the RCC donor list through future mailings. Attachment 10 lists 37 different direct mail letters appealing to the RCC donor list for additional financial support. Each of these mailings is a separate and new attempt to cause additional net income to be generated for RCC to pay any outstanding direct mail bills resulting from our Agreement with RCC.

Interrogatory No. 58.

For the period between April, 1986 and December, 1992, produce all contracts or other agreements entered into by Response Dynamics with clients other than NSPAC and the RCC for the provision of direct mail and/or telecommunications services.

Response:

Agreements entered into by RDI with clients other than NSPAC and RCC between April 1986 and 1992 are included as Attachment 14.

Interrogatory No. 59.

For the period April, 1986 and December, 1992, produce all documents related to extensions of credit to clients other than NSPAC and the RCC in connection with contracts or other agreements for the provision of direct mail and/or telecommunications services.

Response:

Attachment 15 includes year-end aging summaries listing total amounts unpaid and due each of the companies from each agency client. There are six separate summary reports beginning with the year-end 12/31/87 through the year-end 12/31/92.

Interrogatory No. 60.

State the highest amount of debt owed Response Dynamics ever accrued by each of the clients whose contracts are provided in response to Request 58 above, and whether and when Response Dynamics made the determination not to extend further credit to each of these clients.

Response:

Report data is not available for each day of the period April 1986 through December 1992. However, using the year-end aging reports listed above on Attachment 16 we can

determine the high debt for each client as the 12/31 year-end date for each of RDI's clients.

The determination not to extend further credit is never made when direct mail escrow accounts are used. Instead, a decision is made to stop work/mail until we believe a new fund raising idea will work.

Interrogatory No. 61.

Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for Agency commissions on list rentals or rights to list rental income as compensation.

Response:

Clients of RDI besides RCC whose contracts have not provided for agency commissions on list rentals or all rights to list rental income as compensation include the following:

American Association for International Aging  
Americans for a Balanced Budget  
American Indian Heritage Foundation  
Campaign America  
Christian Emergency Relief Team  
Citizens for America  
Center for Intelligence Studies  
International Medical Corps.  
National Center for Public Policy Research  
National Flag Foundation  
Security and Intelligence Foundation  
Support Our Aging Religious  
The Ehrenborg Foundation  
Third World Prosthetic Foundation

Interrogatory No. 62.

Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for sole Agency ownership of all lists created under their contracts.

Response:

No agency contracts provide sole agency list ownership.

Interrogatory No. 63.

Identify all clients of Response Dynamics besides the RCC whose contracts have provided for unlimited use by the client, without payment, of lists created pursuant to their contracts.

**Response:**

Clients of RDI besides RCC whose contracts have provided for unlimited use by the client, without payment, of lists created pursuant to their contracts include the following:

American Association for International Aging  
American Citizens for Political Action  
American Conservative Union  
American Defense Committee  
American Defense Institute  
American Indian Heritage Foundation  
Americans for a Balanced Budget  
Anne Frank Institute  
Campaign America  
Center for Intelligence Studies  
Children's Hospice International  
Children's Survival Fund  
Christian Emergency Relief Team  
Citizens for America  
College Republican National Committee  
Congressional Majority Committee  
Conservative Victory Committee  
Council for Inter-American Security  
International Medical Corp.  
Media Research Center  
National Center for Public Policy Research  
National Flag Foundation  
National Intelligence Center (a project of NCPPR)  
Security and Intelligence Foundation  
Selous Foundation  
Senate Victory Fund (a project of ACPA)  
Support Our Aging Religious  
The Mercy Fund (AF, BTL, FF, NCN)

**Interrogatory No. 64.**

**Identify all clients of Response Dynamics besides the RCC whose contracts have not provided for yearly cost of living adjustments**

**Response:**

Clients of RDI besides RCC whose contracts have not provided for a yearly cost of living adjustments including the following:

American Association for International Aging  
American Citizens for Political Action  
American Conservative Union  
American Defense Committee

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American Defense Institute  
American Indian Heritage Foundation  
Americans for a Balanced Budget  
Campaign America  
Center for Intelligence Studies  
Children's Hospice International  
Children's Survival Fund  
Christian Emergency Relief Team  
Citizens for America  
College Republican National Committee  
Conservative Victory Committee  
David Livingstone Missionary Foundation  
International Medical Corp.  
Media Research Center  
National Center for Public Policy Foundation  
National Flag Foundation  
National Intelligence Center (a project of NCPFR)  
Security and Intelligence Foundation  
Senate Victory Fund (a project of ACPA)  
Support Our Aging Religious  
The Ehrenborg Foundation  
The Mercy Fund (AF, BTL, FF, NCN)  
Third World Prosthetic Foundation

Interrogatory No. 65.

State the Companies' joint average client debt to total income ratio for each business year from 1988 to 1992.

Response:

See Attachment 16.

Interrogatory No. 66.

State Response Dynamics' average client debt to total income ratio for each business year from 1988 to 1992.

Response:

See Attachment 16.

Interrogatory No. 67.

State Response Dynamics' client debt to total income ratio for each of the clients identified in response to Request 58.

Response:

See Attachment 16.

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Interrogatory No. 68.

Produce all documents related to:

- (a) Calculation of the debt to total income ratios resulting from the Companies' joint performance of the April 7, 1986 contract with NSPAC and from Response Dynamics' own performance under this contract.
- (b) Calculations of the average debt to total income ratio of the seven Companies jointly and of Response Dynamics alone
- (c) Calculations of the Companies' joint debt to total income ratios related to clients named in response to Request 58 above.
- (d) Calculations of Response Dynamics' debt to total income ratios related to clients named in response to Request 58 above.

Response:

See Attachment 16.

Interrogatory No. 69.

State all categories of income available to Response Dynamics from use of the Americans for Bush mailing list.

Response:

- (a) First generation list income (actual rental income from the AFB mailing list)
- (b) Second generation rental income (increase in the value and size of all other RDI client lists that obtain new donors from their mailings to the AFB list).
- (c) An overall across the board increase in business volume for RDI and all related companies due to the increase in size of all client mailings for those who have mailed the AFB list.

Interrogatory No. 70.

State by category of income and year the amounts of gross and net income received by Response Dynamics from use of the Americans for Bush mailing list.



Response:

(a) AFB mailing list rental income:

1988	\$ 51,526.11
1989	273,207.63
1990	36,360.32
1991	60,303.00
1992	90,102.45
1993	<u>73,785.41</u>
Total	\$585,284.92


(b) Estimated second generational list rental: Total of 4 million names rented at 2% = 80,000 names acquired and added to second generation lists. This is a conversion rate of 66% or 2/3 of the AFB list being added to other agency client lists. Estimated additional income for the six year period would be 2/3 of the amount generated by the AFB list or \$400,000.

(c) Increase in business for all RDI companies as a result of the increase in size of all client mailing lists who have mailed the AFB list would be calculated by estimating the total number of direct mail pieces produced that would not otherwise be produced if the AFB list never existed.

Estimation: AFB list direct rentals = 4,000,000 extra direct mail pieces produced. Second generation rentals = 2,600,000 extra direct mail pieces produced. Total extra direct mail pieces produced = 6,600,000. Estimated additional revenue to RDI and related companies from the usage of the AFB mailing list is over \$2,500,000.

Respectfully submitted,

By:

  
William H. Schweitzer  
E. Mark Braden  
Baker & Hostetler  
1050 Connecticut Avenue, N.W.  
Suite 1050  
Washington, D.C. 20036

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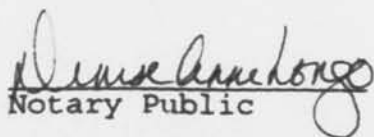
To the best of my knowledge, information and belief, the foregoing Response to the Federal Election Commissions Interrogatories and Request for Documents are true and correct with respect to Response Dynamics, Inc., Response Dynamics, Inc. d.b.a. American Graphic Design; Response Dynamics, Inc. as the surviving entity after merger with American Telephone Marketing Group, Inc., Direct Response Data Management Service, Inc., The Best Lists, Inc., Mid-American Printing Company, Inc., and Fulfillment Management Services, Inc. for the period January 1, 1986 to December 31, 1992.

By:



David A. Kunko  
Response Dynamics, Inc.  
2070 Chain Bridge Road, Suite 400  
Vienna, VA 22182

Subscribed and Sworn  
before me this 7<sup>th</sup> day  
of December, 1994

  
Notary Public

jas3126:84124:92001:response.int

2604371463

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

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

December 9, 1994

Lawrence Noble, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D. C. 20463


Attn: Anne A. Weissenborn, Esq.

RE: MUR 3638; Republican Challengers Committee

Dear Ms. Weissenborn:

Enclosed please find the responses to the interrogatories propounded by the Commission to the Republican Challengers Committee in the above referenced matter.

Very truly yours,



Paul E. Sullivan

Enclosure

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DEC 9 2 23 PM '94

BEFORE THE FEDERAL ELECTION COMMISSION

Republican Challengers Committee,  
and Robert E. Miller, Jr.,  
as treasurer

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Response to Interrogatories and Subpoena to  
Produce Documents

MUR 3638

On behalf of the Republican Challengers Committee ("RCC"), Floyd Brown, hereby responds as follows to the interrogatories propounded by the Federal Election Commission in its October 3, 1994 letter to RCC.

- Interrogatory 1 Response: See attachment "A" hereto for documents relating to the November 7, 1989 contract.
- Interrogatory 2 Response: RCC does not possess any contracts or letters of agreement entered into by Response Dynamics, Inc. ("RDI") on behalf of RCC with the other 6 companies.
- Interrogatory 3 Response: See attachment "B" for documents in response to this request.
- Interrogatory 4 Response: Mr. Ron Kanfer and Mr. David Kunko
- Interrogatory 5 Response: Mr. Floyd Brown
- Interrogatory 6 Response: To the best of my knowledge and my recall, Mr. Kanfer and Mr. Kunko were the only two individuals primarily responsible for the performance of RDI contract activities with RCC.
- Interrogatory 7 Response: Respondent is uncertain as to the Commission's use of the term "principal contractor" as utilized in this interrogatory. By terms of the November 7, 1989 contract, RDI as the authorized agency was empowered to provide a variety of services in accordance with paragraph 1 and paragraph 2 of that agreement. RDI, was the primary contact for undertaking the various direct mail and telephone programs in accordance with this aforementioned contract.
- Interrogatory 8 Response: Respondent refers the Commission to documents contained in the submission to the Commission, herewith. Each mailing is identified on the label of the folders, contained in Document Box 1. (See RCC MUR 3638 document box number 1.)
- Interrogatory 9 Response: RCC objects to this question. The content of the direct mail produced and mailed pursuant to the RDI contract is irrelevant to the alleged violations of 2 USC §441b(a). The listing and associated expense for each mailing has been submitted in Response to Interrogatory #8. That financial information is the only relevant component of the direct mail to the alleged violations. The content is irrelevant.

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Interrogatory 10 Response:

Object: Irrelevant on same basis as stated in Response #9 above.

Interrogatory 11 Response:

Invoices and payment authorizations are submitted to the Commission along with this Response. (See RCC MUR 3638 document box number 1 and 2.)

Interrogatory 12 Response:

Yes.

Interrogatory 13 Response:

Respondent's answer to this interrogatory is based on the presumption that the Commission's reference in this interrogatory which references the RDI contract with "NSPAC" dated November 7, 1989 is intended to reference the RDI contract with RCC dated November 7, 1989. The standard document utilized for authorizing the escrowee to pay vendors from the escrow fund was a payment authorization form. Those payment authorization forms are submitted to the Commission with those documents accompanying this Response. (See RCC MUR 3638 document box number 2.)

Interrogatory 14 Response:

In accordance with the terms of the November 7, 1989 contract with RDI, respondent was presented monthly statements which, to the best of my knowledge, were submitted in chronological order for approval. During the period of December 1988 through January 1991, I was residing in Seattle, Washington and therefore I had very little direct interaction or contact with RDI. Therefore, other than the authorization forms, I am unaware of any other policies or practices used by RDI and the escrowee to determine when vendors were to receive payment for services.

Interrogatory 15 Response:

Absent the review and approval of the payment authorization forms, RCC played little or any role in determining which vendors received payments and the timing of said payments.

Interrogatory 16 Response:

To the best of my knowledge, postage was paid before any other direct mail expense. With reference to payment of vendors, these payments did not constitute reimbursements since these were not an advance of funds for telephone vendors or other fundraising services referenced in this interrogatory. The services were provided pursuant to an arms length written contract invoiced on a periodic basis. I draw a distinction between the extension of credit (which by industry standards is routinely made by vendors to clients) from that of an "advancement of funds" which was not the case to my knowledge with vendors operating under the terms of this agreement. In light of the cash flow, the on-going payment of vendor invoices, and the incurring of new invoices based on new direct mail packages, I am not in a position to state specific instances in which vendors were paid either before or after disbursements to RCC. I reference the Commission to documents submitted in accordance with the subpoena for this matter. (RCC MUR 3638 Document Box 2.)



Interrogatory 17 Response:

None. In view of the fact that the Commission does not define the term "advances" and distinguish it from an extension of credit provided on an arms length basis pursuant to contracts, the question is ambiguous and is answered based only upon my qualified definition of the term as set forth herein.

Interrogatory 18 Response:

Yes.

Interrogatory 19 Response:

To the best of my knowledge, vendors were paid directly from the escrow account in accordance with the contract.

Interrogatory 20 Response:

Number 1: Floyd Brown  
Number 2: Fran Shane  
Number 3: Craig Shirley  
Number 4: Anthony Fabrizio  
Number 5: Kirby Wilber  
Number 6: John Thompson

In my opinion, these were the only individuals who took part in the decisions leading to the establishment of RCC.

Interrogatory 21 Response:

It is my opinion that there was only one meeting held for purposes of the establishment of the RCC. The Commission's definition of "meetings" is ambiguous since it could include each occasion consisting of mere one-on-one conversations. That however, is not the definition I ascribe to the term. Therefore, subject to my interpretation of that definition, the one and only "meeting" occurred on June 21, 1990 in Alexandria, VA for purposes of establishing the RCC organization. The participants in the meeting were Floyd Brown, Anthony Fabrizio, Craig Shirley, Fran Shane, John Thompson, Ron Kanfer, David Kunko, and our legal counsel, Paul Sullivan. The board of directors consisted of Floyd Brown, Anthony Fabrizio, Craig Shirley, John Thompson, and Kirby Wilber. Mr. Fabrizio resigned a short time after the organizational meeting, the specific date of which I do not recall.

Interrogatory 22 Response:

But for Mr. Fabrizio, as noted in Response #21 above, all members of the Board served until the RCC ceased operations.

Interrogatory 23 Response:

This question is ambiguous on its face and I am unable to answer without further clarification. I do not comprehend the reference to the Presidential Victory Committee in this interrogatory.

Interrogatory 24 Response:

There were no employees of RCC.

Interrogatory 25 Response:

There were no transfer of funds between RCC and Presidential Victory Committee or between RCC and National Security Political Action Committee.

Interrogatory 26 Response:

See attachment "C".

Interrogatory 27 Response: None.

Interrogatory 28 Response: None.

Interrogatory 29 Response: None.

Interrogatory 30 Response: None.

I swear to the best of my knowledge the foregoing responses constitute a true and accurate response to the propounded questions.

Floyd G. Brown

Floyd G. Brown

12/8/94  
Date

District of Columbia )

)

SS:

)

Subscribed and sworn to before me in my district this 8<sup>th</sup> day of December, 1994

my commission expires: January 31, 1999

Baibang A. Walden  
Notary Public

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 30, 1995

Mr. Roger M. Craver  
Chairman  
Craver Mathews Smith & Co.  
300 N. Washington Street  
Falls Church, Virginia 22046

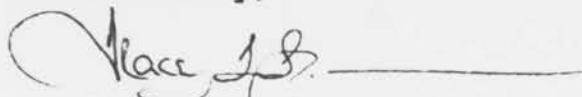
Re: Request to Reschedule  
Informational Meeting

Dear Mr. Craver:

As you know, you agreed to meet with staff from this Office to share information regarding the ordinary course of business in the direct mail industry. That meeting, which was originally scheduled for March 20, 1995, was canceled by Ms. Mary Genoggi of your office on that morning. I telephoned your office last week attempting to reschedule the meeting, however, to date, my calls have not been returned.

While we appreciate that your office may be preoccupied with important business matters, the lack of communication from your office has raised questions as to whether you are still willing to speak with us informally. So that this Office may appropriately plan its course of action, please contact me regarding your intentions with respect to our request for a voluntary informational meeting, without our having to issue a subpoena.

Sincerely,

  
Tracey L. Ligon

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

APR 28 4 02 PM '95

In the Matter of

)  
) 28 U.S.C. § 2462  
) Statute of Limitations  
)

GENERAL COUNSEL'S REPORT

**SENSITIVE**

MAY 16 1995

EXECUTIVE SESSION

I. INTRODUCTION<sup>1</sup>

As the Commission is aware, on February 24, 1995, the U.S. District Court for the District of Columbia decided in Federal Election Commission v. National Republican Senatorial Committee, 1995 WL 83006 (D.D.C. 1995) ("NRSC"), that the statute of limitations set forth at 28 U.S.C. § 2462 ("Section 2462") applied to Commission enforcement suits seeking civil penalties, relying upon the D.C. Circuit's opinion in 3M Co. v. Browner, 17 F.3d 1453 (D.C. Cir. 1994). This Report discusses the statute of limitations generally, describes

enforcement matters potentially affected by the NRSC court's conclusion and makes recommendations for each of the potentially affected matters.<sup>2</sup>

1. This is a combined General Counsel's Report from the Enforcement and Public Financing, Ethics and Special Projects ("PFES") areas of the Office of the General Counsel.

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In NRSC, Judge Pratt held that the Commission could not seek a civil penalty in conjunction with its civil enforcement action against the defendant for violations of 2 U.S.C. §§ 441a(h) and 434(b) because the 5-year federal catch-all statute of limitations found at 28 U.S.C. § 2462 applied to Commission-initiated enforcement suits seeking civil penalties. The court, however, allowed the Commission's suit to go forward notwithstanding this conclusion, ruling that Section 2462 did not apply to the declaratory and equitable relief also sought by the Commission. Therefore, the court so far has issued no final appealable decision.

On May 17, 1994, in FEC v. Williams, the U.S. District Court for the Central District of California reached the opposite conclusion about the applicability of 28 U.S.C. § 2462 to the Commission's enforcement actions. Mr. Williams' contributions in the name of another took place more than 5 years before the Commission filed its complaint and counsel raised 28 U.S.C. § 2462 as an affirmative defense. However, the court ruled at an oral hearing that the statute of limitations did not apply. Instead, the court awarded the Commission a \$10,000 civil penalty against Mr. Williams for violations of 2 U.S.C. § 441f. FEC v. Williams, No. 93-6321 (C.D. Cal. Jan. 31, 1995), appeal docketed, No. 95-55320 (9th Cir. 1995) ("Williams"). Mr. Williams has filed a notice of appeal regarding, inter alia, the district court's

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statute of limitations decision. Thus, whether and to what extent the statute of limitations at 28 U.S.C. § 2462 will apply to Commission enforcement cases will be before the 9th Circuit shortly, and could also be the subject of a later appeal before the D.C. Circuit in NRSC.<sup>3</sup>

In light of this conflict between the courts and the pendency of the appeal, this Office believes a decision to close enforcement cases based solely on a conclusion that the 5 year statute of limitations would apply to any potential enforcement suits would be unwarranted. This is especially true since neither 28 U.S.C. § 2462 nor the NRSC decision limits the Commission's authority to complete administrative investigations or seek civil penalties in voluntary conciliation prior to filing suit. Nonetheless, the Office of the General Counsel recognizes that until the statute of limitations is finally resolved by the courts, respondents are likely to raise it as a defense, making settlement more complicated. Thus, even though the Commission is not bound by the NRSC decision in other cases, the Office of the General Counsel believes the Commission should take this issue into consideration on a case-by-case basis when looking at its active and inactive enforcement cases -- particularly those with older activity -- and, in an exercise of its prosecutorial discretion, attempt to bring the matters most vulnerable to

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statute of limitations difficulties to an early administrative disposition.<sup>4</sup>

In order to give the Commission the broadest picture of the possible effect of a statute of limitations on its caseload, this Office has analyzed all enforcement cases where there is FECA-violative activity that will be 5 years old at some point during this year. Section II of this Report gives an overview of principles involved in analyzing the statute of limitations issue, with particular attention to determining when a Commission cause of action might accrue, and when the running of the statute may be tolled by equitable principles. Section III describes how this Office applied these principles to its active and inactive enforcement caseload and the approach used in making its recommendations for Commission action. Section IV includes descriptions of each of the potentially affected enforcement matters, outlines the statute of limitations difficulties this Office foresees for each, and recommends specific Commission action for each potentially affected matter.

## II. THE LAW

This section discusses 28 U.S.C. § 2462, the federal catch-all statute of limitations, and issues relating to when the statute begins to run, under what circumstances it may be tolled

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and declaratory and equitable relief available to the Commission even if the statute of limitations has run completely.

**A. Accrual**

Section 2462 requires commencement of a suit for civil penalties within five years from the date when the claim first accrued.<sup>5</sup> Thus, as a threshold matter, in considering the potential effect of the limitations period on a particular case, one must determine the complex issue of when the claim first accrued.

**1. General Principles**

A cause of action normally accrues when the factual and legal prerequisites for filing suit are in place, i.e., at the precise moment when the violation occurred.<sup>6</sup> However, federal courts have generally applied the discovery rule of accrual, an equitable doctrine under which a claim is considered to have accrued at the time that a potential claimant knew, or through the exercise of reasonable diligence should have known, of the facts underlying the cause of action.<sup>7</sup>

5. 28 U.S.C. § 2462 provides:

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . .

6. United States v. Lindsay, 346 U.S. 568, 569 (1954).

7. See, e.g., Delaware State College v. Ricks, 449 U.S. 250, 259 (1980) (Court implicitly applied discovery rule to Title VII discrimination suit); United States v. Kubrick, 444 U.S. 111, 122-25 (1979) (court implicitly endorsed discovery rule of accrual, but limited it to discovery of facts underlying a claim,

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The substantial harm theory of accrual can be considered analytically as a particular application of the discovery rule. It is usually advanced in personal injury actions involving latent injuries or injuries difficult to detect, especially in cases of "creeping disease" such as asbestosis. The rule rests on the idea that plaintiffs cannot have a tenable claim for the recovery of damages unless and until they have been harmed. Under the substantial harm theory, therefore, damage claims in cases involving latent injuries or illnesses do not accrue until substantial harm matures or, in other words, until the harm becomes apparent.

The Supreme Court has cautioned against "attempting to define for all purposes when a cause of action first accrues. Such words are to be interpreted in light of the general purposes of the statute and of its other provisions, and with due regard to those practical ends which are to be served by any limitation of the time within which an action must be brought."<sup>8</sup> Thus, in determining the time of accrual in cases arising under the FECA,

(Footnote 7 continued from previous page)  
rather than extending the rule to discovery of legal cause of action): see also Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1386 (3d Cir. 1994); Dixon v. Anderson, 928 F.2d 212, 215 (6th Cir. 1991); Cada v. Baxter Healthcare Corp., 920 F.2d 446, 450 (7th Cir. 1990); Corn v. City of Lauderdale Lakes, 904 F.2d 585, 588 (11th Cir. 1990); Alcorn v. Burlington Northern Railroad Co., 878 F.2d 1105, 1108 (8th Cir. 1989); Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980); Cullen v. Margiotta, 811 F.2d 698, 725 (2d Cir. 1987); Cline v. Brusett, 661 F.2d 108, 110 (9th Cir. 1981); Bireline v. Seagondollar, 567 F.2d 260, 263 (4th Cir. 1977).

8. Crown Coat Front Co., Inc. v. United States, 386 U.S. 503, 517 (1967) (quoting Reading Co. v. Roons, 271 U.S. 58, 62 (1926)).

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courts will look to the nature and goals of the FECA versus the interests underlying the five-year limitations period.

## 2. Accrual in the Context of the FECA

While the discovery rule has been applied in a wide range of cases, originating in the tort context and extending to, inter alia, contract, Title VII, and RICO actions, to date, it appears that only the United States District Court for the District of Columbia has held that the Section 2462 statute of limitations is applicable to the FECA. The court also addressed the precise question of when a cause of action accrues under the FECA. Inasmuch as the district court in NRSC relied on the decision of the Court of Appeals for the District of Columbia in 3M Co. v. Browner, 17 F.3d 1453 (D.C. Cir. 1994) ("3M"), the latter case will be summarized first.

3M was an action brought by the Environmental Protection Agency ("EPA") to impose civil penalties against a company for violations of the Toxic Substances Control Act, wherein the EPA argued that in the exercise of due diligence it could not have discovered the violations earlier. In 3M, the defendant misstated and failed to include information on notices required by the EPA. The court acknowledged that the District of Columbia Circuit has adopted the discovery rule, under which, as discussed above, a claim is considered to have accrued at the time that a claimant knew or should have known of the facts underlying the cause of action. However, the 3M court found that the discovery rule had only been applied in limited circumstances -- those involving remedial, civil claims -- and specifically rejected the discovery

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rule under the circumstances presented, stating that the rule proposed by the EPA in that case was a "discovery of violation" rule. The court concluded that in civil penalty actions the running of the limitations period of Section 2462 is measured from the date of the violation.<sup>9</sup>

In NRSC, a suit arising from violations of the FECA involving excessive contributions and failure to report such contributions to the FEC, the court repeated the options for defining the time of accrual set forth in 3M, stating that a claim accrues "when the defendant commits his wrong or when substantial harm matures." Then, without pinpointing the exact time of accrual, and without specifically attempting to define accrual in the FECA context, the court held that the FECA claim accrued "considerably before the end of the [FEC's] administrative process." While the district court's accrual finding was imprecise, Judge Pratt's construction of 3M suggests that the discovery rule of accrual may be rejected in FECA claims brought in that Circuit.

On the other hand, the Court of Appeals for the Third Circuit, in considering a citizens' suit brought under the Clean

9. In 3M, the court cited the Supreme Court's decision in Unexcelled Chemical Corp. v. United States, 345 U.S. 59 (1953), which was a suit for liquidated damages against a government contractor for unlawfully employing child labor. As the 3M decision noted, in that case, the Supreme Court held that "a cause of action is created when there is a breach of duty owed the plaintiff. It is that breach of duty, not its discovery, that normally is controlling." However, the Supreme Court's focus was the question of whether the claim accrued at the time of the violation versus after it had been administratively determined that the contractor was liable. The Court was not concerned specifically with the question of whether the claim accrued at the time of the violation versus when the plaintiff knew or should have known of the facts underlying the claim.

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Water Act, which has statutory self-reporting requirements comparable to the FECA, held the Section 2462 statute of limitations applicable and embraced the discovery rule. There, the Third Circuit held that since the defendant was responsible for filing reports under the Act and the public could not reasonably be deemed to have known about any violation until the defendant filed the report, the cause of action did not accrue until the reports listing the violations were filed.<sup>10</sup> A district court in Virginia<sup>11</sup> has also embraced this discovery rule for determining accrual under the Clean Water Act.<sup>12</sup>

**B. EQUITABLE TOLLING**

There are instances in which a court may determine that equitable considerations require the statute of limitations to be tolled. Such a determination is made on a case-by-case basis and

10. Public Interest Research Group v. Powell Duffryn Terminals, Inc., 913 F.2d 64, 75 (3d Cir. 1990), cert. denied, 498 U.S. 1109 (1991).

11. United States v. Hobbs, 736 F. Supp. 1406 (E.D. Va. 1990).

12. Various other circuit courts have grappled with the question of when the federal five-year statute of limitations of Section 2462 begins to run, but these cases, which have produced conflicting rulings, have all involved actions to recover civil penalties rather than actions to impose them. Compare United States Dept. of Labor v. Old Ben Coal Co., 676 F.2d 259 (7th Cir. 1982) (in action to recover civil penalty, claim accrues only after administrative proceeding has ended, penalty has been assessed, and violator failed to pay) and United States v. Meyer, 808 F.2d 912 (1st Cir. 1987) (in civil penalty enforcement action limitations period is triggered on date civil penalty is administratively imposed) with United States v. Core Laboratories Inc., 759 F.2d 480 (5th Cir. 1985) (in suit to recover civil penalty limitations period begins to run on date of underlying violation).

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is referred to as equitable tolling.<sup>13</sup> Equitable tolling presumes claim accrual and steps in to toll, or stop, the running of the statute of limitations in light of established equitable considerations.<sup>14</sup> The most fundamental rule of equity is that a party should not be permitted to profit from its own wrongdoing.

There are three principal situations in which equitable tolling may be appropriate: (1) where the defendant has actively misled the plaintiff regarding the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; and (3) where the

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13. Some courts have pointed out that, in instances where the defendant has taken active steps to prevent the plaintiff from suing, e.g., in cases involving fraudulent concealment, the tolling of the statute of limitations is more appropriately referred to as equitable estoppel. See Cada v. Baxter Healthcare Corp., 920 F.2d 446, 450-51 (7th Cir. 1990).

14. Courts have held that statutes of repose cannot be extended by federal tolling principles, see Baxter Healthcare, 920 F.2d at 451; First United Methodist Church of Hyattsville v. United States Gypsum Company, 882 F.2d 862 (4th Cir. 1989). While statutes of repose and statutes of limitations have sometimes been referred to interchangeably, a statute of repose is legally distinguishable from a statute of limitations. Whereas a statute of limitations is a procedural device motivated by considerations of fairness to the defendant, a statute of repose is a substantive grant of immunity after a legislatively determined period of time and is based on the economic interest of the public as a whole and a legislative balance of the respective rights of potential plaintiffs and defendants. See First United Methodist Church, supra. To date, this Office's research has revealed no instances in which a court has held that Section 2462 is a statute of repose in the legal sense and, therefore, held tolling principles to be inapplicable. Indeed, in 3M, the court noted the potential applicability of the doctrine of fraudulent concealment to Section 2462. See 3M, 17 F.3d at 1461, n.15.

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plaintiff has timely asserted his or her rights mistakenly in the wrong forum.<sup>15</sup>

1. Doctrine of Fraudulent Concealment

The Supreme Court has defined the doctrine of fraudulent concealment as the rule that "where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party." Holmberg v. Armbrrecht, 327 U.S. 392, 397 (1946). The Court went on to state that this equitable doctrine is read into every federal statute of limitation. Id.

The doctrine, as applied by the circuit courts of appeal, requires the plaintiff to plead<sup>16</sup> and prove three elements:

15. School District of City of Allentown v. Marshall, 657 F.2d 16, 19-20 (3d Cir. 1981) (quoting Smith v. American President Lines, Ltd., 571 F.2d 102, 109 (2d Cir. 1978)). It should also be noted that statutes of limitations are subject to waiver and may be tolled by agreement of the parties. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982).

16. Pleading requirements for fraudulent concealment are very strict. Some courts invoke Fed. R. Civ. P. 9(b) and require a plaintiff to meet the pleading requirements for fraud. See Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 394 (6th Cir. 1975). Other courts, while not specifically invoking Rule 9, still require specificity and particularity in pleading. See Rutledge v. Boston Woven Hose & Rubber Co., 576 F.2d 248, 250 (9th Cir. 1978); Weinberger v. Retail Credit Co., 498 F.2d 552, 555 (4th Cir. 1974).



- (1) use of fraudulent means by the defendant;
- (2) plaintiff's failure to discover the operative facts that are the basis of his cause of action within the limitations period; and
- (3) plaintiff's due diligence until discovery of the facts.

State of Colorado v. Western Paving Construction, 833 F.2d 867, 874 (10th Cir. 1987).

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The first prong of the plaintiff's burden under the doctrine - the use of fraudulent means by the defendant - warrants some elaboration. The courts have generally held that to establish this element of the doctrine one of two facts must be shown: 1) that fraud is an inherent part of the violation so that the violation conceals itself; or 2) that the defendant committed an affirmative act of concealment - a trick or contrivance intended to exclude suspicion or prevent inquiry.<sup>17</sup> These approaches to establishing the first element of the doctrine of fraudulent concealment have been referred to, respectively, as the self-concealing theory and the subsequently concealed theory. By contrast, the courts have pointed out that silence, without some fiduciary duty, never satisfies this element.<sup>18</sup>

17. See Riddell v. Riddell Washington Corp., 866 F.2d 1480, 1491 (D.C. Cir. 1989); State of Colorado v. Western Paving Construction, 833 F.2d at 876-78.

18. See Rutledge v. Boston Woven Hose & Rubber Co., 576 F.2d 248, 250 (9th Cir. 1978); Dayco Corp. v. Firestone Tire & Rubber Co., 386 F. Supp. 546, 549 (N.D. Ohio 1974), aff'd sub. nom., Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389 (6th Cir. 1975). Some courts have also held that a denial of an accusation of wrongdoing does not constitute fraudulent concealment. See King & King Enters. v. Champlin Petroleum Co., 657 F.2d 1147, 1155 (10th Cir. 1981), cert. denied, 454 U.S. 1164 (1982); but see Rutledge, supra ("denying wrongdoing may constitute fraudulent concealment where the circumstances make the plaintiff's reliance upon the denial reasonable").



Where the plaintiff establishes all three of the required elements, the doctrine provides the plaintiff with the full statutory limitations period, starting from the date the plaintiff discovers, or with due diligence could have discovered, the facts supporting the plaintiff's cause of action.

2. Inducement Due to Intentional or Unintentional Misrepresentation

In cases where the plaintiff has refrained from commencing suit during the period of limitation because of inducement by the defendant, the Supreme Court has found the statutory period tolled because of the conduct of the defendant. See Glus v. Brooklyn Eastern Terminal, 359 U.S. 231 (1973). Under the facts of Glus, supra, the plaintiff averred that the defendant had fraudulently or unintentionally misstated information upon which the plaintiff relied in withholding suit.

3. Subpoena Enforcement

Several district courts have tolled other statutes of limitations in circumstances where the plaintiff was forced to initiate subpoena enforcement proceedings to uncover facts underlying the cause of action.<sup>19</sup> While research to date has not revealed specific instances in which a court has tolled the Section 2462 statute of limitations because the plaintiff was

19. EEOC v. Gladieux Refinery, Inc., 631 F. Supp. 927, 935-36 (N.D. Ind. 1986) (Court held that the statute of limitations was tolled during the time between issuance of subpoena and enforcement because defendant did not have valid basis for not complying with subpoena); EEOC v. City of Memphis, 581 F. Supp. 179, 182 (W.D. Tenn. 1983) (Court held that the statute of limitations was tolled until documents sought in subpoena were made available to EEOC).

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forced to initiate subpoena enforcement proceedings, Section 2462 is sufficiently similar to those statutes which courts have tolled to suggest that the same result would be appropriate. Further, a good argument could be made for equitably tolling Section 2462 in such circumstances because defendants' refusal to comply with the Commission's subpoenas, whether that refusal is reasonable or otherwise, frustrates the Commission's ability to bring the action within the limitations period. Not tolling the statute of limitations in such circumstances while allowing defendants to plead the statute of limitations as an affirmative defense to actions brought by the Commission would allow defendants to profit from refusing to comply with subpoenas, and thus "offer a tempting method of defeating the basic purpose of [the Act]."<sup>20</sup>

#### 4. Continuous Violation Theory

The continuous violation theory is another theory that operates to toll statutes of limitations. In the case of a continuing violation, the violation is not complete for purposes of the statute of limitations as long as the proscribed course of conduct continues, and the statute of limitations does not begin to run until the last day of the continuing offense.<sup>21</sup>

The Supreme Court has cautioned that continuing offenses are not to be too readily found, explaining in the criminal context that "such a result should not be reached unless the

20. See Hodgson v. International Printing Press, 440 F.2d 1113, 1119 (6th Cir. 1973).

21. See Fiswick v. United States, 329 U.S. 211, 216 (1946); United States v. Butler, 792 F.2d 1528, 1532-33 (11th Cir. 1986).

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explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one." Toussie v. United States, 397 U.S. 112, 115 (1970). Thus, the question of whether a violation is a continuing one is largely a matter of statutory interpretation involving the precise statutory definition of the violation.

Courts will generally not find that a violation is continuous absent clear language in the statute.<sup>22</sup>

C. Declaratory Relief and Equitable Remedies

The limitations period set forth in 28 U.S.C. § 2462 applies only to suits for civil penalties. Section 2462, by its own terms, has no bearing on suits in equity.<sup>23</sup> The following is a purely exemplary, non-exhaustive list of various forms of equitable relief that may be available. It should be noted that it is within the discretion of the courts to grant or withhold

22. Compare Toussie, 397 U.S. 112 (1970) (Court held that failure register for draft was not continuing violation where draft statute contained no language that clearly contemplated continuing offense, and regulation under Act referring to continuing duty to register was insufficient, of itself, to establish continuing offense) with United States v. Cores, 356 U.S. 405 (1958) (statute prohibiting alien crewmen from remaining in United States after permits expired contemplated continuing offense where conduct proscribed is the affirmative act of willfully remaining, and crucial word "remains" permits no connotation other than continuing presence). See also Keystone Insurance Company v. Broughton, 863 F.2d 1125 (3d Cir. 1988) (In RICO action, court held that language of the Act, which makes a pattern of conduct the essence of the crime, "clearly contemplates a prolonged course of conduct."); West v. Philadelphia Electric Co., 45 F.3d 744 (3d Cir. 1995) (Court applied continuing violation theory where cause of action required showing of intentional, pervasive, and regular racial discrimination).

23. See Hobbs, 736 F. Supp. at 1410; NRSC, 1995 WL 83006, at \*4.

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equitable remedies and courts will exercise that discretion on a case-by-case basis in light of the particular circumstances of each case.

o **Declaratory Judgment** - A declaratory judgment is a court judgment which establishes the rights of parties or expresses the opinion of the court on a question of law without the court necessarily ordering anything to be done. While a declaratory judgment is similar in some respects to an advisory opinion, unlike the latter, a declaratory judgment is rendered in an adversarial proceeding and is legally binding on all the parties involved.

o **Disgorgement** - Disgorgement is aimed at preventing the unjust enrichment of a wrongdoer. The disgorgement remedy takes away "ill-gotten gains," thereby depriving a respondent of wrongfully obtained proceeds and returning the wrongdoer to the position the wrongdoer was in before the proceeds were wrongfully obtained.

o **Injunction** - A prohibitory injunction is a court order that requires a party to refrain from doing or continuing a particular act or activity. Prohibitory injunctions are generally considered preventative measures which guard against future acts rather than affording remedies for past wrongs.

By contrast, a mandatory injunction is a type of injunction that requires some positive action. A mandatory injunction (1) commands the respondent to do a particular thing; (2) prohibits the respondent from refusing (or persisting in refusing) to do or permit some act to which the plaintiff has a legal right; or (3) restrains the respondent from permitting his previous wrongful act to continue to take effect, thus virtually compelling him or her to undo it. A conciliation agreement provision that requires a committee to amend its reports in conformance with the Act is similar in effect to a mandatory injunction, albeit one entered into voluntarily and without court order. In addition, the creative forms of equitable relief listed below are examples of possible mandatory injunctions that the Commission might seek in court

o **Creative Forms of Equitable Relief**

- require defendant(s) to notify the public that the defendant(s) violated the FECA, e.g., bulletin board posting.
- require additional reporting relevant to preventing future violations of the type committed.
- require defendant(s) to put different procedures in place to prevent future violations of the type committed.
- require defendant(s) to take courses to become familiar with the requirements of the FECA.

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III. ANALYSIS

This section outlines the underlying legal assumptions and other factors considered by this Office in evaluating and making recommendations for each of the potentially affected cases discussed in Section IV, infra. As a preliminary matter, this Office notes that it has reviewed all of the active and inactive enforcement matters where there appears to have been FECA-violative activity prior to January 1, 1991 that will thus be at least 5 years old by the end of this year. By selecting the cases in this manner, this Office has attempted to bring to the Commission's attention all of the matters where, were the NRSC decision applied, the statute of limitations might run this year.<sup>24</sup>

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This Office has assumed for purposes of these recommendations the possibility of a uniform application of the Section 2462 statute of limitations to the FECA in all circuits

This Office has further assumed that it is possible courts will deem claims arising under the FECA to have accrued at the precise moment that the violation occurred.

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In setting forth the case summaries, this Office has divided its discussion into three sections.

The third

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section analyzes

matters which this Office

recommends that the Commission not pursue.

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IV. CASE DISCUSSIONS

This section provides brief descriptions of enforcement matters assigned to the Public Financing, Ethics and Special Projects and Enforcement areas, including the Central Enforcement Docket.

9.6 0-4 3:7 7 1942.1



1. Cases this Office Recommends the Commission Pursue

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MUR 3181 (Barbara-Rose Collins, et al.)

This case concerns the propriety and nature of two bank loans totaling \$75,000 to Barbara-Rose Collins and/or her campaign during the 1990 primary election in Michigan. Four guarantors guaranteed the loans. The Commission found reason to believe that each of the guarantors violated 2 U.S.C. § 441a(a)(1)(A) for making excessive contributions, and that Barbara-Rose Collins, the Collins for Congress Committee, and its treasurer violated 2 U.S.C. § 441a(f) for accepting the excessive contributions and 2 U.S.C. § 434(b) for failing to report the loans and loan guarantees accurately.

This case is important to pursue to resolution. Ms. Collins has won re-election twice since the activities in question and is still actively involved in the political process. The loan guarantors, too, remain politically active.

The primary activities of this case date from July/August 1990. Thus, if 28 U.S.C. § 2462 applies, the Commission might be time-barred from obtaining judicially imposed civil penalties in July 1995 should it opt to litigate this matter.

Should the Commission be barred by the statute of limitations from obtaining civil penalties in court, this case is worth pursuing for purposes of equitable relief. As for Ms. Collins and her Committee, an admonishment, disgorgement of the personal use items obtained with campaign funds, or their monetary equivalent, and an injunction may serve as appropriate remedies. Similarly, injunctive relief against the guarantors might redress their excessive contributions violations. Therefore, for the reasons stated above, this Office recommends that the Commission continue to pursue this matter.

Staff Assigned: Jonathan Bernstein and Holly Baker

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(AA)

MUR 3638 (Response Dynamics, Inc., National Security PAC, et al.)

This matter results from two complaints alleging, inter alia, that Response Dynamics, Inc. and associated companies permitted the National Security PAC ("NSPAC"), the Republican Challengers Committee ("RCC"), and the Presidential Victory Committee ("PVC") to accumulate large debts owed the companies outside the ordinary course of business in violation of 2 U.S.C. § 441b, and that these political committees were affiliated but had not registered and reported as such in violation of 2 U.S.C. §§ 433 and 434.

The Commission found reason to believe that Response Dynamics and its six associated business entities, NSPAC, and the RCC have violated 2 U.S.C. § 441b; that all three committees have violated 2 U.S.C. § 433 and § 434; that PVC has violated U.S.C. § 441a(f) by accepting excessive contributions from an individual; and that the individual has violated 2 U.S.C. § 441a(a)(1)(A). Extensive interrogatories and subpoenas for documents were sent to the committees and companies; responses have been received from all respondents. This Office is reviewing the discovery responses and interviewing non-respondent vendors active in the direct mail/telemarketing business in an attempt to ascertain the ordinary course of business in the industry.

The direct mail and telemarketing programs undertaken for NSPAC by Response Dynamics, et al., began in the fall of 1988 and extended into the spring of 1991. Those for the RCC started in early 1990 and extended into early 1992. Thus, while the debts owed by the committees to the companies began to accumulate outside the five year statute of limitations, they also grew in years which are still within the statutory period (i.e., in 1991 and 1992). These debts continue into the present, those of NSPAC totaling \$1.2 million and those of the RCC totaling \$95,000. Further, Response Dynamics remains an active player; according to one non-respondent witness, it may be continuing the practices in question.

This investigation is going to take several months to complete. Thus,

the Commission might be barred from obtaining civil penalties as to some of the activity in question in the event it chose to file civil suit in this matter. The issues raised by this matter are important ones, however. They involve timely and ongoing questions about the relationships of direct mail and telemarketing vendors and their political committee clients, and the legality of those relationships in light of the prohibitions of 2 U.S.C. § 441b and of the Commission's regulations and advisory opinions governing advances, extensions of credit and debts owed. The amounts of debt at issue here are sizable. The resolution of this matter would undoubtedly have significant ramifications for future enforcement of the Act, including providing an in-depth understanding of the operation of

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(AAA)

what one witness has termed the "response marketing business." Therefore, this Office recommends that the Commission continue with its investigation of this matter, even if declaratory and injunctive relief would be the principal relief available to the Commission should it become necessary for the Commission to file a civil suit.

Staff Assigned: Abigail Shaine, Anne Weissenborn and Tracey Ligon

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3. Cases this Office Recommends the Commission Close

MUR 2984 (Robert Johnson et al.)

This matter involves 1988 corporate fundraising mailings for the 1988 Bush/Quayle campaign and a pattern of contributions made in the name of another, resulting in knowing and willful probable cause findings for violations of 2 U.S.C. §§ 441f, 441b(a), and 441d(a) against the individual and corporate actors.

Of the respondents still open in the matter, Robert G. Johnson and E. Kenneth Twichell were formally referred to the Department of Justice for criminal prosecution; Mr. Johnson pled guilty to felony perjury for lying under oath in a Commission deposition and Mr. Twichell pled guilty to obstructing the Commission's investigation. The corporate respondents, all closely tied to Mr. Johnson, were neither pursued nor prosecuted during the criminal proceeding. As this Office has reported, Mr. Johnson's remaining sentence was stayed based on NRA arguments

No action has taken place since the Supreme Court dismissed the Commission's appeal in NRA, and whether Mr. Johnson will have to serve the balance of his sentence is still unclear.

All of the transactions underlying FECA liability date from 1988, thus posing an obstacle under 28 U.S.C. § 2462 in the event the Commission chose to litigate this matter to obtain civil penalties. The Commission found probable cause in January of 1992, but then referred the matter to the Department of Justice and resumed proceedings in late 1993 after resolution of the criminal proceedings. Prosecutorial discretion strongly counsels against further pursuing the remaining respondents in this matter. The

age of the activity as compared to other pending matters, and the desirability of making public the Commission's initiating role in the prosecution of Mr. Johnson argue in favor of closing this matter.

For the reasons outlined above, this Office recommends the Commission take no further action with respect to the remaining respondents in this matter and close the file.

Staff Assigned: Jonathan Bernstein and Colleen Sealander

906 0-4 367 7 104 26



MUR 3182 (Kentucky Democratic Party, et al.)

This matter, a merger of MURs 3145 and 3182, involves television ads broadcast by the Kentucky Democratic Party during the 1990 general election campaign on behalf of the Democratic Party's Senatorial candidate, Dr. Harvey Sloane. The complaints allege that the ads were prepared by the Sloane campaign's media consultant, paid for by the Kentucky Democratic party's nonfederal account, and financed in part by contributions from the ATLA PAC and from Mary C. Bingham. Mrs. Bingham recently passed away.

Most of the outstanding issues in this matter occurred in the Fall of 1990, slightly less than five years ago. Thus, it does not appear that the Commission would presently be barred from seeking a civil penalty even under the strictest reading of Section 2462. In order for the Commission to obtain a judicially imposed civil penalty in this matter, civil suit must be filed by November of 1995. Yet, even if the Commission were to devote substantial resources to this matter, it is virtually inconceivable that the deadline would be met.

First, in order to proceed, the Commission must review and revoke its earlier determinations in this matter to comply with the NRA opinion. Second, this matter is still in the investigatory stage and further investigation appears necessary. Third, the issues are complex and the two staff attorneys previously assigned to this matter have been transferred to other areas of this agency. Moreover, the allocation regulations at issue in this matter are no longer in effect, having been revised in 1991

Finally, it does not appear that equitable relief would be appropriate here as the only feasible remedy we may obtain is injunctive relief on the misallocation issue: The Sloan Committee has virtually no money for disgorgement and Sloan has never been a candidate in any other federal election. In view of all the foregoing, this Office recommends the Commission take no further action and close this file.

Staff Assigned: Lisa Klein (pending reassignment)

9-6 0-4 3-7 7 1-4 2-7

MUR 3228 (Dahlson for Congress, et al.)

This matter was generated by a referral from the Commission's Reports Analysis Division, and involves the subsidization of the campaign by a corporation associated with the candidate (§ 441b(a)) and the misreporting of one of the corporate loans (§ 434(b)). Specifically, the candidate funneled approximately \$47,000 in corporate funds to the campaign through his personal checking account, thus concealing the true source of the funds. The candidate/corporate loans took place from May to October 1990. Further, the committee misreported the source of a May 2, 1990 direct contribution from the corporation (\$10,000) in its 12-Day Pre-Primary report filed May 21, 1990. Consequently, assuming 28 U.S.C. § 2462 applies, the Commission might be unable to obtain a judicially imposed civil penalty for most of the violations as early as May of this year.

This matter is presently in the investigative stage after an unsuccessful attempt at pre-probable cause conciliation. Most recently, on March 2, 1995, this Office interviewed the campaign's treasurer. The interview established that the treasurer was not involved in the committee's receipt of the funneled corporate contributions and that the misreporting may have resulted from innocent error. Consequently, the available evidence suggests that the candidate Roy Dahlson was the individual chiefly responsible for the violations in this matter.

Additional investigation would be necessary -- including the taking of depositions -- to prove that the § 441b(a) violations by Mr. Dahlson are knowing and willful. This investigation and the subsequent procedural stages leading to litigation would have to be completed in the most expeditious fashion. This Office recommends that the Commission forgo this course. Mr. Dahlson was a one-time candidate who won the primary election but lost the general election with 35% of the vote. Mr. Dahlson is now retired. Accordingly, this matter does not warrant the expenditure of resources necessary for its most expeditious completion and resolution. Therefore, this Office recommends that the Commission take no further action in this matter and close the file.

Staff Assigned: Jonathan Bernstein and Jose Rodriguez

19-6 0-4 3-7 7 124 218

**MUR 3787 (Georgia Republican Party)  
Public Financing, Ethics and Special Projects**

This case involves violations committed during the 1988 election cycle. In particular, an audit of the Georgia Republican Party ("the Party") revealed that the Party accepted \$20,350 in excessive contributions from five individuals that were not resolved in a timely manner. Similarly, the Party accepted \$13,403 in prohibited contributions that were not resolved in a timely manner. The Party also did not properly document approximately \$333,270 in individual contributions. In addition, the Commission found reason to believe that the respondent violated 2 U.S.C. § 441a(f) by paying phone bank employees to conduct get-out-the-vote activities and voter identification on behalf of the Bush-Quayle campaign.

The Party admits that it erred in accepting the prohibited and excessive contributions, but urged the Commission to accept as a mitigating factor the fact that it rid its accounts of the impermissible amounts upon discovery. Similarly, the Party concedes that it failed to keep adequate records for certain contributions, but asserts that a large portion of those receipts were \$35 contributions which it did not believe it was required to document. Finally, this Office has concluded that documentation and affidavits furnished by the Party demonstrate that only \$26,700 of the more than \$300,000 in Party expenditures made for get-out-the-vote and voter identification activities amounted to impermissible contributions by the Party.

Although it may be possible to enjoin similar conduct in future elections, the Party has acknowledged that it violated the Act. Accordingly, assuming that the NRSC decision is followed and judicially-imposed civil penalties are time-barred

then in light of the age of this case and the ordering of the Commission's priorities, we recommend that the Commission take no further action in this matter and close the file. If the Commission adopts this recommendation, the notification letter to the Party will contain appropriate admonishment language.

Staff Assigned: Kenneth E. Kellner and Jane Whang

916 0 4 3: 7 104 29

MUR 3973 (Bob Davis)

This matter stems from a House Bank Task Force referral indicating that former Representative Bob Davis used his committee's petty cash to make disbursements in excess of \$100. Between 1988 and 1992, the committee reported disbursing \$22,708 in petty cash disbursements, \$16,567 of which was reported as having been disbursed by Mr. Davis. In May of last year the Commission found reason to believe that Mr. Davis, his committee and its treasurer violated 2 U.S.C. § 432(h)(1), and that his committee and its treasurer additionally violated 2 U.S.C. § 432(h)(2) for failing to maintain a petty cash journal as required. However, because RAD had allowed the committee to terminate some months before, the Commission took no further action with respect to the committee's violations. Thus, only Mr. Davis remains a respondent in the case.

Of the \$22,708 in petty cash, all but approximately \$9,400 was disbursed prior to 1991. Thus, if 28 U.S.C. § 2462 applies, the Commission might be time-barred from obtaining a judicially imposed civil penalty for a substantial portion of the petty cash.

While our inquiries have confirmed that the committee kept no petty cash journal, that it possesses receipts for only a portion of its cash transactions, and that a small number of the disbursements exceeded \$100, it now appears that Mr. Davis' role in the committee's petty cash was de minimus. Affidavits from two members of Mr. Davis' congressional staff and one from his former campaign treasurer state that while Mr. Davis was the payee of many of the checks, and was reported as same, this was to enable the staff to easily cash the checks at the Wright-Patman Federal Credit Union. In fact, the affiants maintain, the majority of the petty cash was disbursed by the campaign and congressional staff and not Mr. Davis.

Given the age of these violations, the fact that Mr. Davis is no longer a candidate for federal office and his apparently limited personal involvement in his committee's petty cash violations, this Office recommends the Commission take no further action in MUR 3973 and close the file.

Staff Assigned: Jonathan Bernstein and Colleen Sealander

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**MUR 4013 (National Freedom PAC)  
Public Financing, Ethics and Special Projects**

This matter involves chronic reporting violations and the apparent commingling of Committee funds with the personal funds of the Committee's treasurer, Rick Woodrow. The respondents are the Committee and Mr. Woodrow. The material events occurred in 1990.<sup>31</sup>

This is an inactive, internally generated matter. Assuming that the NRSC decision is followed and judicially-imposed civil penalties are time-barred then in light of the age of the violations at issue.

this Office recommends that the Commission take no further action with respect to this matter and close the file.

Staff Assigned: Kenneth E. Kellner and Delanie Dewitt Painter

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31. On July 20, 1994, MUR 3516 was merged with MUR 4013. In MUR 3516, which arose out of a RAD referral, the Commission found reason to believe that National Freedom PAC committed reporting violations.

906 0-4 3-7 125 0-1



V. RECOMMENDATIONS

A. Continue to pursue the following active enforcement matters:

MUR 3838

C. Take no further action, close the file and approve the appropriate letters in the following matters:

- 1) MUR 2984
- 2) MUR 3182
- 3) MUR 3228
- 4) MUR 3502
- 5) MUR 3787
- 6) MUR 3973
- 7) MUR 4013

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With regard to MUR 3492:

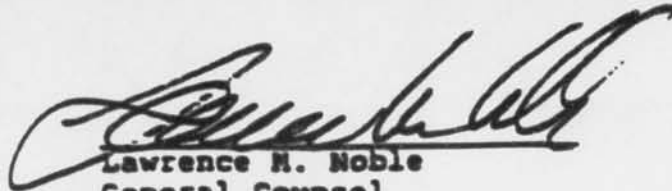
- 1) Accept the attached conciliation counteroffer.
- 2) Close the file.
- 3) Approve the appropriate letter.

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4) Approve the appropriate letters.

4/28/95  
Date

  
Lawrence M. Noble  
General Counsel

Staff Assigned

Staff members assigned to each of the potentially affected matters prepared their respective case discussions; the PFESP cases were coordinated by Jim Portnoy; Tracey Ligon drafted the legal section; and Colleen Sealander combined the parts into one document.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 10, 1995

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Suite 500  
Washington, DC 20005

RE: MUR 3638  
Republican Challengers Committee

Dear Mr. Sullivan:

This is a follow-up to your responses, dated December 9, 1994, to the interrogatories propounded by the Federal Election Commission to the Republican Challengers Committee on October 3, 1994 in the above referenced matter.

In response to Interrogatory 23, you indicated that the question was ambiguous on its face and that you were unable to answer it without further clarification. We appreciate your bringing the matter to our attention. As propounded, Interrogatory 23 contained a clerical error. It should have read as follows:

Identify by year(s) of service and office all officers of the Republican Challengers Committee (RCC) who have served between the RCC's creation and the date of this order.

Would your clients be willing to provide this information to this Office without a second subpoena? If so, please provide this Office with this information by August 25, 1995.

Thank you for your attention to this request. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

  
Tracey L. Ligon  
Attorney

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

9604371505



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 1, 1995

VIA FACSIMILE AND U.S. MAIL

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Suite 500  
Washington, DC 20005

RE: MUR 3638  
Republican Challengers Committee

Dear Mr. Sullivan:

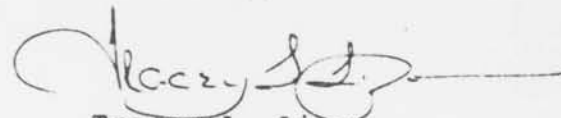
On August 11, 1995, you indicated that during the week of August 21-25, you would provide this Office with the answer to the following interrogatory, which was inadvertently misprinted in the interrogatories propounded by the Federal Election Commission to the Republican Challengers Committee on October 3, 1994 in the above referenced matter. The interrogatory is as follows:

Identify by year(s) of service and office all officers of the Republican Challengers Committee (RCC) who have served between the RCC's creation and the date of this order.

We appreciate your agreeing to voluntarily provide this information and have sent this just as a reminder. If you have already mailed the answer to the interrogatory, please disregard this letter.

Thank you for your attention to this matter. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

  
Tracey L. Ligon  
Attorney

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

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

October 16, 1995

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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Tracey L. Ligon, Esq.  
General Counsel's Office  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

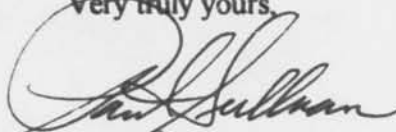
RE: MUR 3638  
Republican Challenger's Committee  
Response to Supplemental Interrogatory

Dear Ms. Ligon:

On behalf of the Republican Challenger's Committee, please find enclosed the response of the RCC to your supplemental interrogatory.

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

Very truly yours,

  
Paul E. Sullivan, Esq.

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BEFORE THE FEDERAL ELECTION COMMISSION

IN RE: Republican Challenger's  
Committee )  
)  
)  
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MUR 3638  
Supplemental Response to Interrogatories

On behalf of the Republican Challenger's Committee ("RCC"), Floyd Brown, hereby responds as follows to the supplemental interrogatory propounded by the Federal Election Commission in its August 10, 1995 letter to the RCC.

1. SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1

The FEC propounded a supplemental interrogatory to the RCC in an August 10, 1995 letter to clarify its original Interrogatory No. 23. The supplemental interrogatory stated as follows:

Identify by year(s) of service and office all officers of the Republican Challenger's Committee (RCC) who have served between the RCC's creation and the date of this order.

As a non-incorporated entity, the RCC had only one officer, that being Floyd Brown, who held the office of chairman and president of the organization from the date of its conception through the date of the Commission's order. Robert E. Miller, Jr. served and continues to serve as the treasurer of the RCC, an office mandated by the Federal Election Campaign Act of 1971, as amended. However, in that capacity, Mr. Miller merely performs ministerial accounting duties and is not a "corporate officer" with any vested responsibilities outside of compliance with the FECA.

I swear to the best of my knowledge that the foregoing response constitutes a true and accurate response to the propounded Interrogatory.

Floyd G. Brown  
Floyd G. Brown

October 12, 1995  
Date

DISTRICT OF COLUMBIA )  
)  
)  
)

SS.

Subscribed and sworn to before me, in my district, this 12 day of October, 1995. My commission expires 2/28/97.

[Signature]  
Notary Public

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Response Dynamics, Inc., et al.

**SENSITIVE**

MUR 3638

INTERIM INVESTIGATIVE REPORT

I. BACKGROUND AND PRELIMINARY SUMMARY

On September 27, 1994, the Commission found reason to believe that the National Security Political Action Committee and Elizabethan I. Fediay, as treasurer (NSPAC), and the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer (RCC), violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from vendors based on evidence of patterns of continuous extensions of credit going beyond the ordinary course of business, and that the corporate vendors which extended this credit, Response Dynamics, Inc.; Response Dynamics, Inc. doing business as American Graphic Design; Response Dynamics, Inc. as the surviving entity after merger with American Telephone Marketing Group, Inc.; Direct Response Data Management Service, Inc.; The Best Lists, Inc.; Mid-America Printing Company, Inc.; and Fulfillment Management Services, Inc., violated 2 U.S.C. § 441b(a). The Commission also found reason to believe that NSPAC and RCC violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by virtue of their affiliation, that RCC violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by virtue of affiliation with the Presidential Victory Committee (PVC), and that PVC and Robert E. Miller, Jr., as

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treasurer, violated 2 U.S.C. § 433(b)(2) by virtue of affiliation with RCC.<sup>1</sup> The respondents were notified of these determinations.

An investigation has been undertaken into this matter. Thus far the investigation has involved a combination of written discovery, including interrogatories and requests for documents, and informal interviews. The purpose of this report is to update the Commission on the status and preliminary results of this inquiry and to recommend additional discovery in the form of formal depositions.

Initially, this Office wishes to remind the Commission of the age of this case and to highlight potential statute of limitations issues. The direct mail and telemarketing programs undertaken for NSPAC by Response Dynamics, et al., began in the fall of 1988 and extended into the spring of 1991. Those for RCC started in early 1990 and extended into early 1992. Thus, while the debts owed by the committees to the companies began to accumulate outside the five year statute of limitations, they also grew in years which are still within the statutory period (i.e., in 1991 and 1992). These debts continue into the present, those of NSPAC totaling \$1.2 million and those of the RCC totaling \$95,000.

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1. In addition, the Commission found reason to believe that NSPAC and PVC violated 2 U.S.C. § 434(c), and that PVC violated 2 U.S.C. § 4441a(f) by accepting excessive contributions from Mrs. Wesley West.

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However, even if declaratory and injunctive relief would be the only relief available to the Commission should it become necessary for the Commission to file a civil suit, the issues raised by this matter are important ones. They involve timely and ongoing questions about the relationships of direct mail and telemarketing vendors and their political committee clients, and the legality of those relationships in light of the prohibitions of 2 U.S.C. § 441b and of the Commission's regulations and advisory opinions governing advances, extensions of credit and debts owed. The resolution of this matter would undoubtedly have significant benefits for future enforcement of the Act, including providing an in-depth understanding of the operation of what one witness has termed the "response marketing business." For these reasons, we previously recommended that the Commission continue to pursue this matter and on May 16, 1995, the Commission voted to do so.

This Office has now completed its first round of discovery in this matter and continues to believe that this case is a very important one to continue to pursue. Inasmuch as we believe that additional discovery in the form of formal depositions will be needed to resolve this matter, see discussion infra, we wanted to apprise the Commission of the progress to date so the Commission could confirm that this case continues to warrant the commitment of the necessary additional resources. In this vein, we are also mindful of respondents' expressed concern about the financial



expenses incurred by the respondents in responding to the Commission's investigations.<sup>2</sup>

## II. REVIEW OF INFORMATION DISCOVERED

To date, this Office has sent subpoenas to the three political committees and the seven corporate vendors involved in this matter and has reviewed the answers provided and documents produced. Also, in an effort to ascertain the ordinary course of business in the direct mail industry, this Office has also conducted informal interviews with two individuals who are involved in the industry.<sup>3</sup> The following information regarding the ordinary course of business in the direct mail industry with respect to extensions of credit was obtained during these informal discussions. As will be discussed below, this Office wishes to continue these discussions in the more formal context of depositions.

Information received to date indicates that it is a normal practice in the direct mail industry to extend credit to political action committees because there is an expectation that PACs will be in existence for a long period of time. Thus, a mailing is

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2. Six of the respondent vendors involved in this matter responded to a previous investigation by the Commission into allegations that they granted extensions of credit outside of the ordinary course of business to NSPAC during the 1987-1988 election cycle. In that matter, MUR 2368, the Commission found no reason to believe that the respondents violated 2 U.S.C. § 441b. However, the activity in that matter is readily distinguishable from the facts of this case inasmuch as, unlike here, in MUR 2368, the committee had continued to make substantial payments to each vendor. This matter examines extensions of credit commencing in the fall of 1988 and extending into early 1992.

3. The two individuals who were interviewed by Commission staff are Ann Stone of Ann E.W. Stone and Associates, and Roger Craver of Craver, Mathews, Smith & Company.

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sent out and bills are paid over an extended period. Generally, in instances in which a particular mailing results in a loss of income for the direct mail company, or the company only breaks even, the company will send out another mailing using only the names of individuals on the mailing list who responded to the first mailing. Our investigation so far also indicates that usually, following a mailing that resulted in a loss of income, only one additional mailing would be done. It appears, however, that decisions as to whether or not to continue mailings when earlier mailings have not been profitable for the company are not governed by any specific criteria; rather, such decisions are made by a direct mail company as it goes along, based on the circumstances.

According to the information gathered to date, when there is debt owed by the client, the direct mail company may send out mailings asking for help in paying the debt. Generally, it appears that the decision to discontinue mailings for the purpose of recovering debt is made when the list stops working, which would be when it appears that the company will not break even or will never succeed in erasing the debt. In this regard, one of the individuals interviewed by staff of this Office stated specifically that "If you are raising \$1.25 for every \$1.00 spent, then you see that probably you are not ever going to have the debt paid."

It also appears to be a usual and normal practice in the direct mail industry for a direct mail company to use income generated from the rental of a client's mailing lists to recover

debt. One of the individuals interviewed stated that such an arrangement between the direct mail company and the client is usually included in the contract, while the other individual stated that such an arrangement is usually negotiated afterwards. Mailing lists are very valuable and are often a committee's greatest asset.

The initial focuses of the present investigation were upon RDI's continued extensions of credit to NSPAC and RCC, i.e., its continued mailings, despite large and increasing debts, see Attachment 1 (debt accumulation chart taken from First General Counsel's Report dated August 8, 1994); upon whether RDI had extended credit in a similar manner to its non-political clients; and upon whether such extensions conform with the usual and normal practice within the direct mail industry. This Office plans to continue to inquire into these areas in the context of formal depositions.

In addition, in an effort to gain a more complete picture of the vendors' continued extensions of credit and of the possible underlying motivations therefor, this Office will also inquire into the assertion raised by the vendors relevant to NSPAC in response to the Commission's findings. Specifically, as indicated in the First General Counsel's Report, counsel for RDI and the related companies has asserted that, as a result of the companies' co-ownership of the mailing lists created pursuant to the agreement with NSPAC, the companies have continued to earn "significant net dollars" and expect to do so "over the next four years," and that "list rental income earned from [NSPAC's]

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Americans for Bush mailing list of 128,000 names and new accounts produced as a result of publicity over this project has more than offset all \$1.3 million owed to the Companies."<sup>4</sup>

Pursuant to the RDI/NSPAC contract, RDI was authorized to take certain actions to cover any outstanding debt. Specifically, the contract provided that if invoices from RDI or Best Lists were thirty days or more past due, RDI was authorized to have NSPAC's

4. In responding to interrogatories, counsel described the amount of additional revenue to RDI and the related companies resulting from the usage of NSPAC's Americans for Bush mailing list as follows:

(a) AFB mailing list rental income:

1988	\$ 51,526.11
1989	273,207.63
1990	36,360.32
1991	60,303.00
1992	90,102.45
1993	73,785.41
Total	<u>\$585,284.92</u>

(b) Estimated second generational list rental: Total of 4 million names rented at 2% = 80,000 names acquired and added to second generation lists. This is a conversion rate of 66% or 2/3 of the AFB list being added to other agency client lists. Estimated additional income for the six year period would be 2/3 of the amount generated by the AFB list or \$400,000.

(c) Increase in business for all RDI companies as a result of the increase in size of all client mailing lists who have mailed the AFB list would be calculated by estimating the total number of direct mail pieces produced that would not otherwise be produced if the AFB list never existed.

Estimation: AFB list direct rentals = 4,000,000 extra direct mail pieces produced. Second generation rentals = 2,600,000 extra direct mail pieces produced. Total extra direct mail pieces produced = 6,600,000. Estimated additional revenue to RDI and related companies from the usage of the AFB mailing list is over \$2,500,000.

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list rental income applied to those invoices. The contract also contained the provision that "if invoices due a creditor for services provided under this Agreement, including the Agency, remain unpaid ninety or more days past the original invoice date, the Agency shall have the right to direct all future direct mail, telephone marketing or other returns to an Escrow Account designated by the Agency for the purpose of tabulation, deposit and disbursement to the creditor."

Despite the availability of these mechanisms, it appears that RDI did not exercise either of these options for covering debts with respect to NSPAC. There is no evidence yet in hand that the companies applied any income from rental of NSPAC's list to the NSPAC debt. RDI's failure to apply the list rental income to NSPAC's debt raises numerous questions, including the following:

- o Can all of the categories of list rental income claimed by RDI be substantiated?
- o Why did RDI choose not to exercise its right to use list rental income to reduce NSPAC's debt?
- o How has RDI treated list rental income with other clients that have outstanding debt?
- o Is it a usual and normal practice in the direct mail industry to take into account each of the different categories of list income recognized by RDI - first generation list income, second generation list income, and overall across the board increase in business volume - in reducing the outstanding debt?
- o If the list rental income "more than offset" the debt owed by

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NSPAC, why have NSPAC and RDI not sought a debt settlement agreement with the Commission?

- o Under what circumstances has RDI ever taken debt collection action against a client? What actions were taken? Was the client a political or a non-political organization?
- o Has RDI claimed the debt owed by NSPAC as a loss for corporate income tax purposes?

In addition, this Office would like to ascertain the total amount of net income RDI earned as a result of the RDI/NSPAC and the RDI/RCC contracts, as well as how RDI calculates its profit. This Office would also like to ascertain more information regarding the issue of affiliation between NSPAC and RCC, and between RCC and PVC.

### III. INVESTIGATIVE PLAN

We believe that deposing both David Kunko, co-owner of RDI, and a financial representative of RDI would provide the information needed for a more complete picture of RDI's financial activities involving NSPAC and RCC, as well as RDI's past practices with respect to such activities. We also believe that, in addition to the information obtained thus far, valuable additional information about the usual and normal practices of the direct mail industry can be obtained from Ms. Ann Stone, Mr. Roger Craver, and Mr. Denison Hatch, see description, infra. Although staff from this Office have spoken informally with two of these individuals, we would like to depose them to get their previous answers as well as answers to additional questions under oath.

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Further, we believe that valuable information regarding why NSPAC and RCC continued to accept extensions of credit from RDI despite their large and increasing debt to RDI can be obtained from the officers of these political committees. The officers of the political committees will also be able to answer questions regarding the issue of affiliation among the committees - between NSPAC and RCC, and between RCC and PVC. Accordingly, we propose to depose Response Dynamics, Inc. and the following individuals:

1. Response Dynamics, Inc. - This Office suggests that the Commission issue a subpoena to Response Dynamics, Inc. in order to allow the corporation to select the individual that it deems to be the most appropriate person to respond to this Office's inquiries regarding the corporation's financial activities.
2. David A. Kunko - Mr. Kunko is a co-owner of RDI and is responsible for business and accounting functions of RDI and the related companies.
3. Ann Stone - Ms. Stone, of Ann E.W. Stone & Company, is one of the individuals with whom staff from this Office spoke previously regarding the usual and normal practice in the direct mail industry. Based on information obtained subsequent to this Office's earlier interview with Ms. Stone, we would like to follow-up on some of her earlier statements.<sup>5</sup>

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5. For example, during our informal interview with Ms. Ann Stone, staff from this Office posed a hypothetical question regarding whether it would be a normal practice in the industry for a company to continue mailings for a client when the client's debt to income ratio was 300% at the end of the second year of mailings. Ms. Stone stated that it would be "dumb" not to stop mailings. Without any mention of RDI by Commission staff, Ms.

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4. Roger M. Craver - Mr. Craver, of Craver, Mathews, Smith & Co., is the second of the two individuals with whom staff from this Office informally spoke regarding the usual and normal practice in the direct mail industry.
5. Denison Hatch - Mr. Hatch is associated with the Direct Marketing Association in Washington, D.C. He is the editor of "Who's Mailing What" which is published by that organization, and has been recommended as a person very knowledgeable about the direct mail industry as a whole.
6. Elizabeth I. Fediay - Ms. Fediay is the chairman and treasurer of NSPAC.
7. Floyd G. Brown - Mr. Brown is the chairman and president of RCC. He is also the chairman of PVC. According to sworn affidavits submitted in an earlier matter, MUR 3069, Mr. Brown was one of the principal individuals involved in a NSPAC media project in 1988. In another matter, MUR 3556, the

(Footnote 5 continued from previous page)  
Stone indicated that RDI did this with Americans for Bush. She said that RDI has really bad contracts - "charlatans," and that some agencies do continuous mailings, despite losses, for the billings.

It would be helpful to have Ms. Stone elaborate on her statement regarding the "charlatan" nature of RDI's contracts as well as to share why she feels that some agencies do continuous mailings for the billings, despite losses. Her comment regarding RDI's "bad contracts" may be particularly useful as we may discover that certain contract provisions are not usually included in contracts in the direct mail industry. We note that RDI's contract merely authorizes RDI to apply income received from list rentals to the client's outstanding debt, leaving it within the company's discretion to do so or not. This provision differs from a similar debt collection provision included in the standard contract of Craver, Mathews, Smith & Company (CMS). CMS's contract provides that in the event that a client owes a debt to the company, "all rental income ... shall be applied to liquidation of the direct mail debt."

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complainant submitted a videotape in which Mr. Brown indicated that he had been the political director of NSPAC in 1988.

8. Robert E. Miller - Mr. Miller is the treasurer of both RCC and PVC.

**IV. RECOMMENDATION**

1. Approve the attached sample Subpoena for Deposition to be sent to Response Dynamics, Inc., David A. Kunko, Ann Stone, Roger M. Craver, Denison Hatch, Elizabeth I. Fediay, Floyd G. Brown, and Robert E. Miller.

Lawrence M. Noble  
General Counsel

Date

10/24/95

BY:

  
Lois G. Lerner  
Associate General Counsel

**Attachments:**

1. Charts Illustrating Accumulation of Debt (2)
2. Sample Subpoena for Deposition

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FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS  
COMMISSION SECRETARY

DATE: NOVEMBER 1, 1995

SUBJECT: MUR 3638 - INTERIM INVESTIGATIVE REPORT  
DATED OCTOBER 26, 1995.

The above-captioned document was circulated to the  
Commission on Friday, October 27, 1995 at 12:00.

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

Commissioner Aikens	_____
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	_____
Commissioner McGarry	<u>XXX</u>
Commissioner Potter	_____
Commissioner Thomas	_____

This matter will be placed on the meeting agenda  
for Tuesday, November 7, 1995.

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 )  
Response Dynamics, Inc., et al. ) MUR 3638

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on November 7, 1995, do hereby certify that the Commission decided by a vote of 4-1 to approve the sample Subpoena for Deposition to be sent to Response Dynamics, Inc., David A. Kunko, Ann Stone, Roger M. Craver, Denison Hatch, Elizabeth I. Fediay, Floyd G. Brown, and Robert E. Miller as recommended in the General Counsel's October 26, 1995 report.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

Attest:

11-8-95  
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 22, 1995

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Roger M. Craver  
Craver, Mathews, Smith & Co.  
300 N. Washington Street  
Falls Church, VA 22046

RE: MUR 3638

Dear Mr. Craver:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Federal Election Commission has issued the attached subpoena which requires you to appear and give sworn testimony on Wednesday, November 29, 1995 at 999 E Street, NW, Washington, DC in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but, rather, a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney present with you at the deposition. If you intend to be so represented, please advise us of the name and address of your attorney prior to the date of the deposition.

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Roger M. Craver  
Page 2

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the mission shall be paid \$40.00, plus mileage. Subsequent to the deposition, you will be sent a check for the witness fee and mileage.

Within two days of your receipt of this notification, please confirm your scheduled appearance with me at (202) 219-3400.

Sincerely,

*Tracy L. Ligon*

Tracy L. Ligon  
Attorney

Enclosure  
Subpoena

9604371524

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

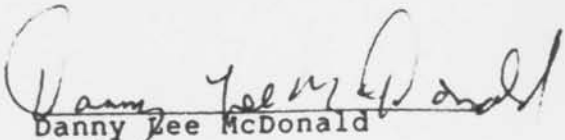
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MUR 3638

SUBPOENA


Roger M. Craver  
c/o Craver, Mathews, Smith & Co.  
300 N. Washington Street  
Falls Church, VA 22046

9604371525  
Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to usual and normal practices in the direct mail industry. Notice is hereby given that the deposition is to be taken on December 6, 1995 at 999 E Street, NW, Washington, DC beginning at 10:00 am and continuing each day thereafter as necessary.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, DC on this 22nd day of November, 1995.

  
Danny Lee McDonald  
Chairman  
Federal Election Commission

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

November 22, 1995

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ann Stone  
Ann E.W. Stone & Associates  
Suite 200  
2900 Eisenhower Avenue  
Alexandria, VA 22314

RE: MUR 3638

Dear Ms. Stone:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Federal Election Commission has issued the attached subpoena which requires you to appear and give sworn testimony on Wednesday, November 29, 1995 at 10:00 a.m. in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but, rather, a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney present with you at the deposition. If you intend to be so represented, please advise us of the name and address of your attorney prior to the date of the deposition.

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Ann Stone  
Page 2

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid \$40.00, plus mileage. Subsequent to the deposition, you will be sent a check for the witness fee and mileage.

Within two days of your receipt of this notification, please confirm your scheduled appearance with me at (202) 219-3400.

Sincerely,



Tracy L. Ligon  
Attorney

Enclosure  
Subpoena

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3638

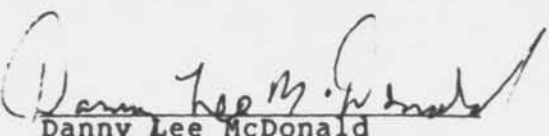
SUBPOENA

Ann Stone  
c/o Ann E.W. Stone & Associates  
Suite 200  
2900 Eisenhower Avenue  
Alexandria, VA 22314

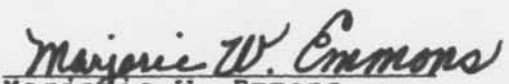
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Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to usual and normal practices in the direct mail industry. Notice is hereby given that the deposition is to be taken on November 29, 1995 at 999 E Street, NW, Washington, DC beginning at 10:00 am and continuing each day thereafter as necessary.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, DC on this 22nd day of November, 1995.

  
Danny Lee McDonald  
Chairman  
Federal Election Commission

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 27, 1995

Ms. Ann Stone  
Ann E.W. Stone & Associates  
Suite 200  
2900 Eisenhower Avenue  
Alexandria, VA 22314

RE: MUR 3638

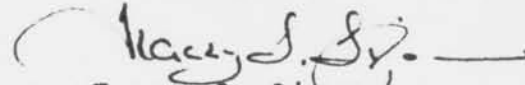
Dear Ms. Stone:

Pursuant to my telephone conversation this morning with Jackie of your office, this confirms that you will appear and give sworn testimony at the Federal Election Commission at 999 E. St., N.W., Washington, D.C., on Wednesday, December 13, 1995 at 12:30 p.m.

Since this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case. Accordingly, please sign and return to this Office the enclosed Confidentiality Advisement.

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

Sincerely,

  
Tracey L. Ligon  
Attorney

9604371529



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 29, 1995

Mr. Roger M. Craver  
Craver, Mathews, Smith & Co.  
300 N. Washington Street  
Falls Church, VA 22046

RE: MUR 3638

Dear Mr. Craver:

Pursuant to my telephone conversation this afternoon with Ms. Julie Meling of your office, this confirms that you will appear and give sworn testimony at the Federal Election Commission at 999 E. St., N.W., Washington, D.C., on Thursday, December 21, 1995 at 10:00 a.m.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Tracey L. Ligon", is written over a horizontal line.

Tracey L. Ligon  
Attorney

960437157C



FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20461

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Dec 4 10 32 AM '95

MUR 3638

CONFIDENTIALITY ADVISEMENT

Since this information is being sought as part of an investigation being conducted by the Federal Election Commission, the confidentiality provisions of 2 U.S.C. Section 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation. You are advised that no such consent has been given in this case.

*Ann*  
Signature

11/29/95  
Date

Ann Elizabeth Merche Stone  
Print Full Name

2900 Eisenhower Jct Alex. VA 22314  
Address Including City, State and Zip Code

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# ANN E. W. STONE AND ASSOCIATES, INC.

CONSULTANTS IN DIRECT RESPONSE MARKETING AND ADVERTISING

February 1, 1996

Ms. Tracey L. Ligon  
Federal Election Commission  
Washington, DC 20463

mur 3638

Dear Ms. Ligon,

Enclosed please find the materials you requested. The information you requested on Mr. Dennison Hatch is as follows: 401 N. Broad Street, Philadelphia, PA 19108,

If I can be of further assistance to you please don't hesitate to call.

Sincerely,

  
Ann E.W. Stone

AEWS/dl

2900 EISENHOWER AVENUE, SUITE 200, ALEXANDRIA, VIRGINIA 22314-5223

PHONE: (703) 329-1982

FAX: (703) 329-2411

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MEMBERS of the Association are companies or divisions of companies that provide consulting services to nonprofit organizations with respect to direct response fundraising. Members do not solicit funds from the public.

Services provided by members include offering advice and counsel; conducting feasibility studies and tests; designing and managing campaigns; developing and producing solicitation materials; and providing mailing lists

All those enjoying membership in the Association subscribe to the following standards and requirements as a condition of that membership. All provisions of these Rules may not pertain to services provided by members to for-profit organizations or certain political or religious organizations.

## ASSOCIATION OF DIRECT RESPONSE FUNDRAISING COUNSEL

1501 Broadway, Suite 610  
New York, New York 10036  
(212) 354-7150

*The Association of Direct Response Fundraising Counsel was founded in 1986 to serve and represent firms that specialize in consulting with non-profit organizations about their direct response fundraising campaigns.*

*ADRFCo was formed to achieve three main goals:*

- 1) to create and enforce the industry's first set of comprehensive ethical standards;*
- 2) to represent its members' interests before state and federal government; and*
- 3) to educate non-profit organizations and the general public about the use of direct response fundraising.*

*ADRFCo members pledge compliance with the Rules of Business Ethics and Practice, ensuring the highest standards of ethics in dealings with non-profits, regulators and the public.*

*A membership list is available on request.*

## ASSOCIATION OF DIRECT RESPONSE FUNDRAISING COUNSEL

## RULES OF BUSINESS ETHICS AND PRACTICE

# ADRFCo

Dedicated to Fundraising in the Public Interest

## 1. ACCOUNTABILITY OF MEMBERS

The Association recognizes special obligations of public accountability due to the status enjoyed by the client group it serves. Accordingly, upon the request of a member of the public, a member will:

- (a) Divulge the existence of a client relationship.
- (b) Provide a copy of the contract governing its employment as fundraising counsel or inform the inquirer where the contract may be obtained.
- (c) Provide a list of the member's owners and/or principals.

## 2. ACCOUNTABILITY OF CLIENTS

A member of the Association will not knowingly serve an organization that fails to meet minimum standards of public accountability. A member will take reasonable, affirmative steps to assure that a client organization meets these standards. An organization must:

- (a) Maintain an independent, functioning board of directors (or other governing body).
- (b) Provide detailed information on its finances upon request.
- (c) Provide detailed information on its programs upon request.
- (d) Not permit self-dealing or material conflict of interest on the part of its officers, directors, or employees.
- (e) Operate consistently with its stated purposes.

## 3. OBTAINING CLIENTS

Nonprofit organizations deserve an extra degree of care when approached by a business offering fundraising services.

Accordingly, a member of the Association will not:

- (a) Exaggerate its performance record or lead a prospective client to a false conclusion that a given result is guaranteed.
- (b) Offer any kind of compensation to an officer, director, employee, or advisor of a prospective client for aid in obtaining the client's business.
- (c) Enter into the business relationship without reasonable assurance that the client understands the economics and privileges of direct response fundraising.
- (d) Enter into the business relationship without first stating in writing the reasonable expectations for fundraising income.
- (e) Perform work for compensation for a client without a written contract.
- (f) Execute a contract with any party other than one reasonably appearing to have the authority to commit the client.

## 4. CONTRACTS

For the protection of both members of the Association and nonprofit clients, contracts must contain minimum safeguards. Therefore, any contract entered into between a member and a nonprofit organization will contain provisions that:

- (a) Clearly describe the services to be provided and the compensation to be paid.
- (b) Specify the period for which the contract has effect.
- (c) Allow the nonprofit organization ten days from the date of the contract's signing in which to cancel the contract without obligation.
- (d) Require final approval from the client for list selection, copy, and cost projections.
- (e) Promise prompt, detailed reporting of results upon the campaign's conclusion, upon the close of the client's annual accounting period, or upon the client's reasonable request.
- (f) State that the client bears financial responsibility for all services procured in execution of the campaign.
- (g) (i) Clearly state the terms and conditions, if any, for relieving the client of its contractual obligations before the time specified as the contract duration; and (ii) give the client fair notice of any continuing obligations that may exist after a termination by the client.

## 5. FEES

A member of the Association must base its fee on actual services to be provided at a prearranged, reasonable level of compensation. Necessarily, "reasonable" can only be determined by all the factors involved, including: the time and type of labor involved, the nature and duration of the professional relationship between provider and client, and the ability and experience of the people performing the services.

Fees based on a percentage of fundraising proceeds, however stated, are not favored. A member may enter into such an arrangement only if it is based on an actual, demonstrable, and fair allocation of risk and if the resulting compensation remains within reasonable bounds.

## 6. FUNDRAISING METHODS

Members of the Association owe obligations of truthfulness and integrity directly to the donating public. Accordingly, in conducting a campaign, members will not:

- (a) Knowingly misrepresent a nonprofit organization's mission, accomplishments, or plans for the future. A member will take reasonable, affirmative steps to avoid such a misrepresentation.
- (b) Knowingly impart expectations to the public that cannot be fulfilled. A member will take reasonable, affirmative steps to avoid creating such an expectation.

(c) Knowingly create confusion between the nonprofit client's identity and that of any other nonprofit, mental, or private organization. A member will take reasonable, affirmative steps to avoid creating confusion.

(d) Receive donations or exercise control over the expenditure of donations.

(e) Perform work for a client when the member's reasonable judgement indicates that the undertaking question will clearly jeopardize the client's exist-

## 7. CONFLICT OF INTEREST

Strong protections against even an appearance of conflict of interest are necessary. This is so due to the great public trust placed in nonprofit organizations and, by implication, in the businesses that serve them. Accordingly, a member of the Association shall assure that:

- (a) All decisions by the nonprofit client affecting business dealings with the member shall be undertaken without the prospect of undue influence. No officer, director, principal, or fiduciary (or close relative of the preceding) of a member may serve a client organization as officer, director, or employee.
- (b) A client knows in advance of any material relationship between the member and a third party who provides services related to direct response campaigns. If, after disclosure, a member may not engage in an interested transaction that does not demonstrably benefit the client.
- (c) No credit or loans be extended to a client company upon the continuation of the employment relationship between member and client.

## 8. CONFIDENTIALITY

All dealings between members of the Association and clients are confidential, except:

- (a) as provided in this subpart.
- (b) where the subject matter is a public record, or
- (c) where a member is obeying the legitimate order of a lawful authority.

Adopted May, 1987

As Amended June, 1988

**ANN E. W. STONE AND ASSOCIATES, INC.**

CONSULTANTS IN DIRECT RESPONSE MARKETING AND ADVERTISING

**ASA  
Client  
Handbook**

**FAX (703)836-0118**

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## ANN E. W. STONE AND ASSOCIATES, INC.

CONSULTANTS IN DIRECT RESPONSE MARKETING AND ADVERTISING

# Introduction . . .

**T**his booklet has been put together in order to provide ASA clients with an overview of the workings between agency and client.

We hope that you will find these materials to be helpful and that they will provide the structure for a smooth-working relationship between ASA and your organization.

As far as we know, there is no other agency that provides such a document for their clients, and for that reason this booklet has been copyrighted.

Please do not share it with anyone outside of your organization.

The guidelines outlined in this booklet are subject to the fine tuning between you and your Account Representative here at ASA. We ask that any major deviations from these guidelines be covered in writing to make certain they are clearly understood by all.

We stand ready here at ASA to serve you.

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# ANN E. W. STONE AND ASSOCIATES, INC.

CONSULTANTS IN DIRECT RESPONSE MARKETING AND ADVERTISING

## What is Direct Response Marketing?

*Direct Response Marketing* is a term that is bandied about these days and yet very few people truly know what it is.

Simply put: *Direct Response Marketing* is any form of marketing or advertising that solicits a response of some sort from an audience.

This includes direct mail, telemarketing, direct response space ads and direct response radio and television spots.

What follows is a brief definition of each:

### Direct Mail

The most widely used direct response marketing medium in an advertising campaign is direct mail.

There are generally two types of mailings in a direct mail campaign:

1. *Prospecting* — a mailing to an audience who has never given to you before.

We generally find in the prospecting phase that overall the percentage of response will run about 1.7% response with an average contribution of about \$20, or more.

So for planning purposes, the prospecting phase should be counted on mainly to capture low dollar donors.

*Special Note:* You must decide how much you plan to budget for prospecting. If the goal is break even or net dollars from prospecting, we would mail at one pace.

If the goal is to generate the greatest number of donors and get back the highest response possible to build the list quickly, we would mail at another pace. Your parameters will determine our pace.

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2. **Housefile Mailings** — these mailings are to an audience of donors that have given you any amount whatsoever, at least once.

Not all donors are created equal in their ability to give to your organization. Therefore, ASA carefully segments housefile mailings to separate the lower from the higher dollar donor.

We specifically devise packages that will upgrade those capable of giving more.

On a higher dollar donor you need to spend a little extra on the package. They need more personalization and must almost always be mailed first class. As well, often we include stamped return envelopes instead of BREs to generate higher dollar gifts.

This is not speculation, ASA continually conducts focus group research to determine just what high dollar direct mail donors are responding to.

Conversely, we mail less expensive packages to low dollar donors who will never be able to give over \$25 or \$50 total to your group.

These donor re-solicitations through housefile re-mailings are the key to generating maximum net dollars.

So, as you can see, it is critical to prospect aggressively and *early*. We need to build your list quickly to make sure we have the greatest possible amount of time to re-solicit your donors to generate the greatest net money possible.

As a point of comparison to prospecting, your donor re-solicitation mailings can yield an average percentage response anywhere from 5% to 48% instead of the 1.7% average return on prospects.

As well, the dollar average, while it might be \$18 to \$20 in prospecting, can generally be upgraded to as much as \$35 or \$50 or more on the housefile mailings . . . as well, special "clubs" can be set up to upgrade house donors to the \$1,000+ level.

The dollar upgrade is possible because once the donor has given, ASA can then identify his minimum giving level by his first contribution and upgrade him based on that information.

The more information, such as past giving history, that you can cite in a letter, the more likely you will get a repeat and increased gift from your donor.

*Special Note: In the battle for dollars in a direct mail campaign, it has often been said that a direct mail program can be likened to building a hotel.*

*You don't make a great deal of money (if any) while the hotel is being built (the prospecting phase of building a list), the real net money comes when the hotel is opened for repeat business (the donor re-solicitation of the list).*

*But mail is only one type of direct response marketing media that should be used in a marketing campaign.*

*Others include:*

### Telemarketing

The use of the telephone to generate dollars.

This is perhaps *the* most effective medium for upgrading the dollar contributions from your donors.

### Direct Response Space Ads

Ads run in newspapers or magazines that include either a coupon or at least the organization's address and phone number (800 number would be best) so that you can generate response to the ad.

### Direct Response TV and Radio Ads

These are ads that urge the listener to call, or to write for any combination of the following:

1. to get more information
2. to get studies, buttons, etc.
3. to donate money
4. to volunteer
5. to let you know they will support you

By including a phone number and/or address in the ads, you may not only recover part of your cost, but identify new found donors and/or volunteers as well.

## Services ASA Stands Ready to Offer You

*We would hope that you will* make use of ASA's skills in a wide range of direct response marketing services.

But the choice is yours.

In order to insure that you are able to make an informed choice, let us list and briefly summarize each of the services ASA offers:

### A. DIRECT MAIL

#### Putting It All Together

As you know, direct mail marketing is what ASA is best known for.

We can handle all creative, design, production, tracking, list procurement, file maintenance and response analysis for your prospect, housefile and voter/consumer contact mail.

After a package theme is agreed upon and a maildate is set, ASA will create the copy, get your written approval and take it from there (getting the appropriate approvals on costs and lists as well).

In order to insure that any mailing program for you is successful, there are at least 7 elements that must come together:

1. Theme/Concept Development
2. Effective Copy and Package Design
3. Responsive Lists

4. Proper Scheduling
5. Accurate Response Analysis
6. Donor List Development and Maintenance
7. Back End Acknowledgement and Fulfillment

### Theme Development

ASA will work very closely with key members of your staff to insure that all parts of ASA's direct response program for you are "speaking with the same voice."

*Market research* or surveys on your organization and audience are invaluable to proper theme development.

We can proceed on gut instinct — it's worked before, but we proceed at your risk.

Concept or Theme Development is critical to the positioning of the package and your organization.

No matter how good the copy may be, if the basic theme or concept is faulty, it won't work.

But we cannot develop proper themes and concepts without constant interaction with your group.

### Effective Copy and Package Design

Good direct mail copy is often neither good grammar or well-written academic prose.

No one receives a direct mail donation from a professor by turning in a term paper.

Further, eloquent or heavy prose is also not the best direct response copy.

Market research shows that the most effective fundraising appeals have sentences of 21 words or less, paragraphs of less than 5 lines, lots of single line paragraphs for emphasis and words of two syllables or less.

Even given those limitations, it is not our intention or desire that the copy talk down to the recipient. Rather, these *guidelines* are *designed to insure* that the copy is *readable* and *easily understood* by all.

As well, in the design of the package, we draw upon a reservoir of knowledge from years of market research and study.



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The colors we choose, the way the copy and art are placed, the kind of typefaces we choose are all based on actual market studies.

Simple additions to a package design, such as a "snap" label, can increase the response on a particular list by as much as 40%!

The proper use of personalization — the actual color computer ribbon used, can increase or decrease the response you get.

The use of brochures or flyers can increase or decrease the response unless the graphics are correct.

There are so many more variables and items that can affect a mailing, they are too numerous to go into here.

But we hope what we have detailed will give you an idea that many variables are possible.

### Proper Scheduling

A loser in life is a man without a plan. A loser in direct mail is not only a man without a plan, but without a plan that is aggressive enough to reach his goal.

In terms of donor re-solicitations — you must commit to mail your donors at least monthly.

Many clients recoil in horror at that aggressive a schedule.

But ask yourself this question, "Does your group need the money?"

If the answer is "yes," then you have an obligation — a *duty* to write back to that donor and tell them about the need for money.

They have made an investment in your group and if your group suffers because you didn't want to bother the donor, then you have really let the donor down. You have squandered his initial investment.

Also, these frequent housefile mailings should be looked at as forms of communication with the donors to keep them up-to-date on the progress of your projects.

If the mailings are well-written and well executed, the donors will appreciate hearing from you. It is true that there will be a few who will complain that you write too often — but that would happen regardless.

On prospect mailings, as well as donor mailings, we must be ready to move quickly when special occasions arise that we can take advantage of.

ASA is oriented to do just that. Mailings can be turned out (in some cases, not all) in as little as 24 to 72 hours, provided we have computer tapes in hand.

In the case where lists have to be ordered from outside sources, the turn-around time is longer.

### **Response Analysis**

Many clients think that our work stops on the day the mail is delivered to the Post Office.

Quite the contrary.

Tracking the results of the mailing and doing response analysis is perhaps the most important part of ASA's overall consultation.

For that reason, we have developed a custom-designed computerized Project Management System to aid us in providing up-to-date, accurate reports to see just how the mail is doing.

The best way to explain this part of ASA's service is to encourage your representatives to come visit the ASA facilities so that we can show you our programs firsthand.

Let us know if you would be interested in seeing them.

### **Donor List Development and Maintenance**

File maintenance is perhaps the most misunderstood and most often ignored aspect of a direct mail program, yet it is the most critical.

The proper input of donor names, donation amounts, mailcodes, and contribution dates is critical not only for proper reporting, but also for a prosperous donor re-mail program.

As we mentioned earlier, the more information you capture accurately about the initial donation, the more likely you can upgrade a donor's giving.

As an agency, ASA endeavors to do all we can to insure proper file maintenance. However, keeping the file clean and up-to-date is the duty of both the client and the agency.

ASA closely monitors the batching and keypunching of client donor information (unless the client chooses to arrange for this themselves).

A case comes to mind regarding work we did in the past for Thurmond for Senate where ASA's monitoring efforts proved to be critical to recovering valuable lost do-

nors for the Thurmond campaign:

It seems that approximately four cartons of source material containing the names of new Thurmond for Senate donors were lost.

This fact would not have been known except that we had numbered all the batches. These donors were lost when a Thurmond for Senate employee was involved in a car accident and the car was impounded.

The cartons of donors were in the trunk of that car.

ASA had advised Thurmond for Senate that our records showed that there was a gap in the source material that was to be entered onto the file.

The Thurmond people insisted that that could not be so. But ASA persisted. It took 3 months, but we finally uncovered what happened.

The sad news is that we had to report to the campaign that the loss of that source material — and, therefore, the fact that those new names hadn't been mailed during that 3 month period — resulted in a loss of almost \$80,000 net *based on actual mailing results* of other new names mailed during that period.

So again, we hope it is clear that careful monitoring and file maintenance is critical to the program.

In terms of developing the best possible record format for your computer list, let us list out those items which we use most often in computer record formats:

### ***Minimum Computer Record Layout***

*(For each donor)*

- Title code (Mr, Mrs, Reverend, Dr, The Honorable)
- First Name
- Middle Name
- Last Name
- Suffix (Sr, Jr, MD)
- Salutations (Nicknames, etc.)
- Home address
- Home city, state, zip
- Home phone number
- Marriage indicator (in order to permit two married donors to merge into one household)
- Interest flag codes (to indicate interest to volunteer, host a coffee, etc.)
- Company name (optional)
- Company street address (optional)
- Company city, state, zip (optional)
- Company phone number (optional)

(for each donation)

- Contribution
- Mailcode
- Amount of contribution
- Date received

We would also ask you to consider whether or not you would want to overlay other kinds of census data, as well as put county code information into the computer record.

Once the file is set up, we would advocate that at least once during the year you have what is called an "overkill" program run to locate keypunch errors and possible duplicates on the file to be manually identified and cleaned.

To avoid duplication, we demand that all donor and prospective mailings have computer-generated source material coming back to your offices ( i.e. all reply forms must have recipients' name and address already typed out either on labels or computer personalization) to insure the minimum chance for keypunch error.

Otherwise, keypunching from a handwritten name and address (where the donor has filled in their name and address by hand) can run an almost 90% risk that the name and address will be keypunched incorrectly.

*The worst thing you can do is to misspell a prospective donor's name.*

### Back-end Acknowledgement

Thanking a person for their contribution is not only a sign of good breeding, but it is also good business.

The chance that the donor will give again increases in direct proportion to the speed with which a gift is acknowledged.

There is nothing that irritates a donor more than a late thank you or worse, no thank you at all.

Psychologists call it *dissonance reduction*.

Dissonance refers to the anxiety someone has after they make a commitment. A good example is the anxiety someone has after buying a new car (especially if it's a kind of car they have never bought before).

They wait to see what other people's reactions are. If there is positive reinforcement by praise from their friends or a good follow-up by the salespeople who sold the car, the person is less likely to be anxious about the purchase.

But if no one says anything, and leaves them out there to twist in the wind, the chances are that they will never purchase that kind of car again.

A thank you is that personal, positive reinforcement that the donor made the right choice and did the right thing.

It is essential that we work together to create thank you copy that will reduce their anxiety by letting the donor know right away that their money was put to good use and, wherever possible, detailing exactly what the money was used for.

Also, if there are any other promises made in the copy, such as premiums offered or additional information requested, you must make sure to send it along with the thank you. Otherwise you should acknowledge in the thank you that you will be following up with the additional items requested or promised.

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*Many of the items that we have covered under the direct mail section apply in one sense or another to the other forms of direct response services that ASA offers.*

*Even so, we will touch on three additional areas just to let you know what will be available in terms of ASA service.*

## **B. DIRECT RESPONSE TELEVISION AND RADIO CONSULTING**

No direct response program, whether it be for fundraising or advertising, in this day and age would be complete without direct response television.

Simply put, direct response TV involves those ads with phone numbers and/or addresses that solicit a response then and there.

Except in rare instances, direct response television cannot carry a direct response program alone.

To insure a successful on-going program, a multi-media mix is needed. Other media include direct mail, space ads, radio and telemarketing.

Depending on the needs of your program, ASA will draw up the plans to integrate direct response TV into your overall marketing program.

Direct response television and radio are relatively new forms of direct response marketing. There are very few "experts."

However, it has become clear in the industry that the most effective direct response electronic media scripts are written by the best direct mail copywriters.

They now realize good direct response radio or TV is really a good direct response package.



Again, it just makes sense to add some direct response to at least some of your radio and television advertising since it could mean that you will recover some of the costs of those ads, as well as generate "virgin" donor and/or volunteer names for your group.

We have had great success with the clients we have worked with on these projects.

One of our non-profit clients generated 70,000 direct response names in a national campaign over a two-week period.

In fact, 25,000 of the names came in on one weekend alone.

That was with one TV ad on 3 stations in 3 states.

ASA has also found that the conversion of these names into good direct mail responsive donors often is higher than the conversion of a one-time donor into a second-time donor.

### C. SPACE AD DESIGN AND PLACEMENT

ASA will sit down with you and develop space ad concepts for your group.

As well, we are happy to draw up a list of prospective magazines and newspapers that we feel would be appropriate to test market.

Once the ad is designed and copy approved, ASA will proceed to place the ad and follow-up to make sure the campaign is supplied with tear-sheets.

The results on the direct response ads would be tracked in the same manner as the direct mail program.

Your group would receive the same kind of reports from Ann Stone and Associates as to the success of the ad.

There is no way to tell you how much this will cost. Instead, it would be better for you to give us a budget figure and we would tell you how much media we could reach with that amount of money.

Our experience tells us that for as little as \$10,000 we would be able to do some limited market testing.

## D. TELEMARKETING

Telemarketing is an effective fundraising upgrade tool, as well as a lead-generating tool.

Your mailing program would not be complete without a well thought out and structured Telemarketing program.

Telemarketing can take four forms and is best used to supplement your house mailings:

1. **Pre-Calls**

Calling in advance of the package to increase the response rate.

2. **Follow-up Calls**

To follow-up and make sure a package was received and encourage a timely response. (This often can ensure a second gift from a recipient as well.)

3. **Lapsed Donor Calls**

This program stands on its own and is not necessarily tied into a direct mail piece. Simply put — the donor is phoned and *then* a direct mail piece is sent out to collect the pledges. Any donor who has not given to your organization for over 12 months will fall into this group.

4. **Time Sensitive Issue Calls**

When an issue arises on which you might not have time to mail a package, this is where telemarketing becomes a very effective vehicle with which to raise large sums of money quickly.

Here at ASA, Account Representatives are ready to set up, coordinate and analyze your Telemarketing program.

We have tested over ten firms nationwide and narrowed down those who are best for our kind of direct response phoning.

We also stay on top of current and pending national legislation that might affect your telemarketing program.

When used for fundraising, it is best to use paid phoners, not volunteers.

Although we'd be willing to work with script development with volunteers you may want to test, we'll advocate testing them against a paid telephone operation to see which is most cost effective.

If you choose to use an outside telemarketing firm, there is normally no up-front cost (except in the case where telephone numbers have to be looked up) and credit terms can be arranged.

However, bills must be paid within 30 days of receipt. Ma Bell still doesn't give you extended credit terms.

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*This overview was intended to acquaint you with the basic services ASA has available.*

*Whether you use all or just part of them is up to you. However, it is essential that each of these areas be coordinated regardless of who in your organization is responsible for them.*

*This multi-media mix of direct response marketing is critical to the success of any modern marketing campaign.*

# ANN E. W. STONE AND ASSOCIATES, INC.

CONSULTANTS IN DIRECT RESPONSE MARKETING AND ADVERTISING

## Getting Started: What is Involved in a Client/Agency Relationship?

For your informational purposes only, we have outlined the most pertinent items with a brief summary to give you a more complete picture of what is involved in working well with ASA.

### AGENCY RESPONSIBILITIES

Listed below are the responsibilities that ASA as an agency assumes to ensure the client's program is successful.

1. **Client Marketing Meetings:** ASA will make itself available for on-site meetings with the client should they be necessary. Of course, we will always be available for unlimited contact by phone and mail.
2. **Comprehensive Planning:** ASA will develop and revise, as needed, a comprehensive direct response marketing strategy to help achieve the client's goals and objectives.
3. **Copy Development:** ASA will work with the client to make sure all copy, whether it be for letters, telemarketing scripts, space ads, etc. will truthfully reflect the style and philosophy of the client.

All such copy will be submitted to the client with a copy approval cover sheet, for their written approval before any further work is done on that project or any outside costs are incurred.  
(See Attachment A.)

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4. **Package Design:** The design and execution of the graphics for the client's direct response marketing will also be a primary responsibility of ASA. Again, this will require working closely with you to develop a "look" that is uniquely yours and that you are comfortable with.

ASA will take into account what needs to be done in order to insure that it will maximize the response.

A xerox of rough "mocked up" art will be submitted, whenever possible, along with the copy for your approval. This insures that you will have "no surprises" on what the package looks like.

5. **Production Coordination:** ASA will issue all purchase orders and get at least 3-5 bids on each mailing we produce for you. (See Attachment B).

As well, ASA is responsible for tracking the job to make sure it gets done — correctly and on time — or we go after the vendor for compensation on your behalf.

Additional ASA production procedures not yet covered; an explanation of each procedure and form:

- a. **Purchase Orders** — a purchase order is released for every item purchased for a direct mail job. On the purchase order the quoted price is listed [Attachment B (again)].
- b. **Vendor Error** — vendor errors can cause many problems resulting in missed maildates and, therefore, loss of income. So price reduction due to vendor error is important because clients should not be expected to pay for a job done improperly. Also, only then do vendors become more aware of the need for quality control.

Examples of printer vendor errors:

- Carriers not gummed for live stamping — had to stamp by special process — missed maildate.
- Flyer folded wrong — had to be refolded by hand — missed maildate.

To notify a client of outside vendor errors, it is suggested that the



stamp shown below be used on the back of the delivery ticket to be sent to the client (after the inventory books have been posted, all delivery tickets should be forwarded to direct-bill clients). This way, the job number, purchase order number, vendor name, and sample of the item involved are all attached — there is no need to look up or copy anything.

Other arrangements can and maybe set up with you, the client, instead of this procedure.

#### VENDOR ERROR

Description: \_\_\_\_\_

\_\_\_\_\_

This error may cause a reduction in bid price agreed upon for this job. If you wish to effect a change in price, you should contact us.

#### ii. Mailshop error examples:

For the mailhouse, there are no bid prices or delivery tickets. Therefore, it is suggested on mailhouse errors that we use our file copy of the purchase order, make a photocopy, describe the error on that copy, and send it to you, the client.

#### Examples of mailhouse errors:

- Mailhouse omitted an insert — had to be opened, insert added — missed maildate.
  - Mailhouse did not send sample package before mailing — used wrong insert — will hurt response.
- c. *Invoices* — all invoices for purchased materials will be sent to the client directly. Of course, there are some exceptions to this rule, but generally this is the procedure. This direct billing method presents the need for the client to send ASA a regular aging report.
- d. *Inventory* — if a package is mailing over a period of time, ASA may purchase materials in advance in order to save the client money and to account for spoilage. A report listing this inventory will be given to the client on a monthly (or sometimes bi-monthly) basis if the client requests it in writing.
- i. *Standard Overage*

There is no "set" standard overage ordered on all printing jobs. It

varies for each package determined by quantity and type of items being ordered.

Extra spoilage will be allowed for on specialty items like decals, bumper-stickers, stamps to be tipped on, special envelopes and forms. 1-2% extra overage will be ordered on these items.

ii. **Acceptable Overruns**

There is a limit to the number of overruns allowed a printer on a job for which he should be paid by the purchaser. This percentage is stated on our purchase order form. The acceptable overruns range from 2-3%.

e. **Notification of Delivery**

- i. Once a printed item is delivered, we are notified via telephone by the mailhouse of the delivery.
- ii. When we get the sample of the printed item, we verify the quantity ordered with the mailshop and check the quality of the finished product.
- iii. After that is completed, we forward the sample to the client so that you can, if you so desire, re-check the quantity against the invoice you receive (since we don't see the supplier invoice).
- iv. When requested, ASA will arrange for actual signed delivery tickets. Please notify your account person in writing if you want these provided by the printer/mailshop. We usually order such tight print orders that underruns are caught immediately, but when ordering for inventory, delivery tickets can become important.

f. **Mailing Schedules** — mailing schedules are updated weekly, and a copy of these is sent to the client at least every other week. This gives the client the availability to check packages, their results and current schedules. Sample form is attached. (See Attachment C).

g. **Sample Packages** — at least two (2) final samples of all components of a direct mail package will be sent to the client. If the client wishes to receive extra samples for his use, he should notify the Account Representative in writing well in advance of the maildate to make arrangements.

- 9 6 0 4 3 7 7 1 5 8 4
6. **List Recommendations:** It is common direct mail wisdom that 80% of the success of a mailing is due to the list selection.

ASA works with one of the premiere list companies in the country to ensure the very best list recommendations for our clients.

And unlike other agencies, ASA carefully tests and does responsible list continuation recommendations so that you will not be left with huge debts to pay off at the end of the plan.

7. **Regular Reports:** ASA will supply the client with reports on all projects undertaken by ASA. These reports will include projections for future mailings or other projects, as well as updates on returns and a summary of final results. (See Attachment C for one example)

## CLIENT RESPONSIBILITIES

Listed below are the responsibilities that the client normally assumes when working with ASA. Please note that most of these responsibilities are designed to protect you, the client . . . not to create red tape.

By fulfilling these, you will be kept fully aware of what's going on in your direct mail program.

Some clients prefer to turn any number of these items back over to ASA for their control. That is your choice. Let your account person know what you prefer. ASA is more than happy to help in any way we can:

1. **Client Contact:** You should establish one contact who will receive ASA mail schedules, sample packages, Mail Control Plans, list recommendation sheets, purchase orders, copy and art.

This does not necessarily have to be the same person who approves art, copy, lists and costs.

2. **Copy Approval:** All copy must be approved by you and specifically by the person who actually signs the letter copy or is featured in the ad copy. A Copy Approval Sheet (Attachment A) is sent with each package. This, along with the approved copy, should be signed and returned to ASA.

*We ask that you initial each page accompanying the copy approval sheet to make sure you've seen each item in the package.*

This sheet accompanies a full xerox copy of a complete proposed package for your approval.

When possible, we will also include a rough layout of the artwork so you will have the full picture of what the package will be like.

3. **Signers:** Designating and obtaining signers for a direct mail package is up to you unless other arrangements are made with ASA.
4. **Mail Control Plan/Cost/Art Approval:** Cost estimates, art and package design should be approved by you at the point you sign off on the Mail Control Plan form (Attachment D).

This form is used by ASA to list out all package components, list selections and postage requirements.

If you are not interested in seeing each item in the package broken down with prices, then you may elect to just have projected total prices listed on the outside of the Copy Approval Sheet and not see the Mail Control Plan at all.

All you need do is advise your ASA account person which option you prefer.

Price estimates are just that. We generally do not go back to you for further sign off unless the total actual bid cost of the package exceeds the approved estimated package price.

5. **Credit Application:** It is necessary that ASA receive a completed credit application to keep on file with our production department. Many of our better vendors require them before they will do work with a new client. (Attachment E).
6. **Prepayment** — there are two items that require prepayment. When renting lists, some owners require *list prepayment*. An invoice will be sent to the client from Capstone Lists. *All postage for mailings* must also be prepaid.
7. **List Order Sheet:** This sheet (Attachment F) will be sent to you for your approval before ASA authorizes Capstone to order any prospect lists. This may happen prior to, or subsequent to, the copy approval and/or the mail control plan approval.

If we are proposing tests of lists on this sheet, only the column from list name on over to the right will be filled out.

If, however, we are proposing list continuations, all the columns will be filled in listing out prior results that you have experienced with this list.

Again, these lists cannot be ordered without your written approval so it is to your advantage to expedite the list order sheet so that the mailing can proceed.

8. **Postage Advances:** You are responsible for advancing postage for each mailing. The postage needed and date due are indicated on the Mail Control Plan.
9. **Caging Tallies:** You and ASA will mutually decide which caging house to use. Should you cage your own mail, you are responsible for making sure ASA receives tallies on a timely basis and in no case more than 5 days from contribution date.

Since list continuations and segmentation for housefile mailings are based on the results of previous mailings, the faster ASA receives return tallies, the faster the next mailings can go out.

10. **BRE Account Money:** You are responsible for keeping a balance in the BRE account so returned mail may be picked up on a regular basis.

The Post Office will usually notify you if the BRE account is low on funds. Also, you must bundle and return (to the Post Office) any stamped BRE's for postage (80%) credit. (See Attachment G)

11. **Source Material:** All source material must be sent to the computer house for regular updates — in any case no less than on a monthly basis.
12. **Thank You Program:** You, with the help of ASA, will initiate and maintain a thank you program for all new donors.

Thank You's should be sent out within 24 hours of receipt of gift. \$500 plus (and possibly even \$100 plus) donors should receive a personal telephone call from one of your principals.

13. **Comment Mail/Complaint Mail:** Once a direct mail program is initiated, you will receive positive comment and complaint mail. This mail should be answered by you, and then forwarded to ASA.

This gives ASA the opportunity to see what the general reaction is to the mail, generate ideas for future letters, and to alleviate any future problems.

14. **List Maintenance:** With ASA's help, it is up to the client to oversee the maintenance of their list. Since the list is often one of the client's greatest assets, we encourage the client to carry out this responsibility with the utmost care.



## List Maintenance Procedures

- a. *Undeliverable and Delete Procedures* — since the Post Office, by its own admission, agrees that much of the so called "undeliverable" mail truly would have been deliverable (but the person was having a bad day - the mailbox fell off the house - the dog was in the front yard, etc., etc.), we do not delete people the first time that they are considered "undeliverable."

Instead, since each donor costs you an average of \$15 to \$25 to acquire in the first place (with all your costs, both back end and front end, figured in), we hold the name until it is undeliverable two to three times before authorizing the computer house to delete them. Please follow this procedure unless advising ASA otherwise in writing.

- b. *Merge/Purges and Suppression Of House Names* — it has been our experience, as well as industry standard, that merge/purges are not cost effective unless you are mailing a quantity of at least 200,000 during one week's time period. This standard will be followed unless the client advises ASA otherwise in writing.

- c. *Non-Donor Policy for Key punch* — in the beginning of your program, the client should advise their ASA account person on whether or not they want non-donors keypunched as a matter of course.

Otherwise, depending on the number of non-donors, and the "quality", ASA may request that a random group of 5,000 be keyed so they can be tested with a non-donor conversion package. Also, ASA may approach the client and set up a "deal" for the keypunch of certain non-donors for which ASA would be willing to split the costs of keypunching. If such an arrangement is made, it will also include those names between ASA and the client.

- d. *File Updates and Computer Services* — since the quality of list maintenance by a computer service is a vital and integral part of the mailing program, it is essential that ASA be actively involved in your search and decision on a computer house.

We have a wide range of experience on computer houses in the D.C. Metropolitan Area, as well as selected areas across the country.

We are perhaps even more interested in the software and reporting systems of a computer house as opposed to the hardware they might offer you.

We also are concerned about their ability to make the proper selects

and their speed in getting your files updated and your thank you's in the mail.

*e. Decoys on Your File — (see Attachment I)*

15. **Project Fulfillment:** This is extremely important. The money that is brought in from a package must go toward what is promised in the copy. The fulfillment of these promises is your responsibility.
16. **Payments:** ASA and vendors should be paid within (60) days to avoid interest charges. As the client, you have two options for handling invoices:
  - a. We can have the vendors bill you directly (which is our first choice) so that you can see there is no ASA mark up on the mailing. Or,
  - b. We can bill "through" ASA and simply give you one bill for the entire mailing. It is up to you to decide which option you prefer.
17. **Charges for Handling Escrow Accounts:** Clients who have escrow agreements with ASA will be charged at the rate of \$100 per hour for ASA's time spent in handling those escrow accounts, as outlined in the escrow agreement.
18. **Delays in Payments to Vendors:** Clients will be billed at the rate of \$100 per hour for ASA's time spent in dealing with vendors on past due or non-payment of invoices.

To ensure that these fees are not charged to your account, please be sure to meet the payment terms agreed upon with the vendors handling your jobs.

---

*Again, we believe a clear definition of client and agency responsibilities is essential.*

*There are so many details to direct response marketing that we do not want to mislead you that all items could possibly have been covered completely in this section.*

*Instead, it was our intention to highlight those items that are most likely to be of greatest concern.*

☐ REVISED \_\_\_\_\_

ASA JOB NUMBER: \_\_\_\_\_

Attachment A

☐ REVISED \_\_\_\_\_

REQUISITION NUMBER: \_\_\_\_\_

## ANN E. W. STONE AND ASSOCIATES, INC.

CONSULTANTS IN DIRECT RESPONSE MARKETING AND ADVERTISING

### **COPY APPROVAL FORM**

TO: \_\_\_\_\_

CLIENT: \_\_\_\_\_

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

Enclosed for your review are copies of the package described below. Please mark on the copy any changes or comments you wish to make. To indicate your approval with marked changes, please do the following:

1. SIGN YOUR NAME IN FULL AT THE BOTTOM OF THIS FORM
2. INITIAL EACH PAGE OF COPY AND ALL COMPONENTS
3. RETURN SIGNED FORM AND INITIALED PACKAGE TO ASA, INC.

We would like to mail this package on \_\_\_\_\_, to \_\_\_\_\_

To mail this package on schedule, we need your approval by DATE: \_\_\_\_\_

PACKAGE NAME: \_\_\_\_\_ APPROX. COST PER PIECE: \$ \_\_\_\_\_

### **ACCEPTANCE OF COMPONENTS**

Letter: \_\_\_\_\_ # of pages \_\_\_\_\_ (Computer/Offset)

Reply: (Computer/Offset) \_\_\_\_\_

Insert: \_\_\_\_\_

Insert: \_\_\_\_\_

Carrier Envelope: \_\_\_\_\_

BRE/RAE: \_\_\_\_\_

Other: \_\_\_\_\_

PACKAGE APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

*Client Signature*

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1315 DUKE STREET, ALEXANDRIA, VIRGINIA 22314

703/836-7717

96043771559

**ANN E. W. STONE AND ASSOCIATES, INC.**

1315 DUKE STREET, ALEXANDRIA, VIRGINIA 22314

(703) 836-7717 FAX 703-836-0118

**PURCHASE ORDER**

No 174

ASA JOB#

ASA Client #

**DATE RELEASED:****DATE DUE:**

All invoices must show ASA Job # above and be accompanied by actual samples of the items provided. Invoices without this information will be returned, unpaid.

**TO:****SHIP TO:****Attachment B****QUANTITY****DESCRIPTION****UNIT PRICE****AMOUNT**

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**BILL TO:****TOTAL: \$****SPECIAL INSTRUCTIONS****Note to Vendor:** Acceptance of this purchase order means you accept the terms stated herein.

1. All invoices must be accompanied by 2 samples.
2. **Bill direct to the client named above.** By accepting and fulfilling this purchase order the supplier expressly acknowledges and agrees that this purchase order is to be charged against the account of the client named above and that said client shall be solely responsible for the payment of any invoice resulting from this purchase order.
3. **BLUELINES ARE REQUIRED**, unless otherwise specified in writing. Camera ready artwork enclosed.
4. Please notify us immediately if you are unable to ship complete order no later than 5:00 p.m. of specified delivery date.
5. **50 samples to ASA, Inc.** prior to or no later than delivery date.
6. No charges or changes will be binding on client listed on this P.O. unless written authorization is given.
7. All freight charges are to be prepaid (at vendors expense and are to be included in bid.)
8. **No under runs will be accepted.** Acceptable over run is 2-3 percent.
9. **Artwork must be returned to ASA within 24 hours of delivery or bill will not be paid.**

**ATTENTION: Mailshop**

1. You must weigh sample packages before inserting, otherwise, you will be liable for charges resulting from packages being overweight.
2. 3602 and/or 3606's are required as proof on all mailings. Failure to provide these forms will result in non-payment of invoice.

**REQUISITIONED BY:****AUTHORIZED SIGNATURE:**

### Attachment C

ALEXANDRIA, VIRGINIA 22314

## MAIL SCHEDULE

**Client**

☐ Projected☐ Interim☐ Final

Page \_\_\_\_\_ of \_\_\_\_\_ Pages

Date/Updated

☐ HOUSE  
☐ PROSPECT

RESULTS CAGED THROUGH \_\_\_\_\_



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**ANN E. W. STONE AND ASSOCIATES, INC.**

CONSULTANTS IN DIRECT RESPONSE MARKETING AND ADVERTISING

**APPLICATION FOR CREDIT ACCOUNT**

Date \_\_\_\_\_

Firm Name \_\_\_\_\_

Firm Address \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_ Phone No. \_\_\_\_\_

Former Address \_\_\_\_\_

Nature of Business \_\_\_\_\_ How long in business \_\_\_\_\_

Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Sole Trader \_\_\_\_\_

**Corporate Contact:**

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

Title \_\_\_\_\_

Phone No. \_\_\_\_\_

**Bank References:**

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

Address: \_\_\_\_\_

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

Address: \_\_\_\_\_

**Trade References (If possible, list three Washington area firms)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

**IF YOU ARE EXEMPT FROM SALES TAX, FILL OUT THE CERTIFICATE OF RESALE  
ON THE BACK OF THIS FORM**

1315 DUKE STREET, ALEXANDRIA, VIRGINIA 22314

703/836-7717

# INFORMATION NEEDED BY ASA PRODUCTION DEPARTMENT

Name: \_\_\_\_\_ ( ) See Page 1

Address: \_\_\_\_\_ ( ) See Page 1

Phone: ( ) \_\_\_\_\_ Long Distance Code: \_\_\_\_\_

Contact: \_\_\_\_\_ Position: \_\_\_\_\_

BRE Permit #: \_\_\_\_\_ City/State Held: \_\_\_\_\_

BRE Address: \_\_\_\_\_

Bulk/Non Profit Permits: \_\_\_\_\_

PERMIT #:

CITY/STATE HELD:

Client courier approval? ☐ Yes ☐ No

Client Federal Express approval? ☐ Yes ☐ No Fed. Express #: \_\_\_\_\_

Client blueline approval? ☐ Yes ☐ No

Should client be sent blueline? ☐ Yes ☐ No

## PAYMENT TERMS

BID:

☐ 30 Day Pay

☐ 60 Day Pay

☐ 90 Day

☐ 50% up front balance payable within \_\_\_\_\_ days

Escrowed Account: ☐ Yes ☐ No

BILLING ADDRESS (If different than above or on Page 1)

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

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

Attention: \_\_\_\_\_

COMMENTS:

Date: \_\_\_\_\_

Date Updated: \_\_\_\_\_

Date Updated: \_\_\_\_\_

Date Updated: \_\_\_\_\_

9604371564

# CAPSTONE

MAILER:  
PACKAGE:

## Attachment F

Date \_\_\_\_\_

- ☐ Select/Omit \_\_\_\_\_
- ☐ Merge/Purge \_\_\_\_\_
- ☐ H/F Suppression \_\_\_\_\_
- ☐ Labels \_\_\_\_\_
- ☐ Tape \_\_\_\_\_

Results as of \_\_\_\_\_

[illegible]

APPROX. COST PER PIECE  
TEST: \_\_\_\_\_  
CONT: \_\_\_\_\_

APPROVED BY A.E.S.: \_\_\_\_\_ DATE \_\_\_\_\_ Ship Material To: \_\_\_\_\_

APPROVED BY CLIENT: \_\_\_\_\_ DATE: \_\_\_\_\_

Client signature authorizes Capstone to order the above lists(s).

Client is liable for all cost incurred from date of signature \$ 4 0 6 9

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## Credit Now Offered for Stamped Reply Mail

Customers will be able to claim a credit for postage affixed to business reply mail (BRM) under conditions set forth in the Federal Register for January 11.

The rule, which became effective Feb. 10, provides that postage and fees will be collected on all incoming business reply mail.

After the mail has been delivered to the business reply permit holder, he or his employees can separate out the BRM bearing postage, band the pieces in packages of 100 with identical amounts of postage affixed. Credit can then be claimed for the postage. There will be no refund for the business reply fee of 3.5 cents per piece.

On July 29, the Postal Service published in the Register a proposal which would have prohibited mailers from affixing postage to BRM and prohibited permit holders from encouraging their correspondents to affix postage to business reply pieces.

As a result of the comments and views expressed by a number of postal service customers, the proposal was modified to permit the claiming of a credit for postage applied to BRM.

An addition to part 131.23 of the Postal Service Manual will say:

"Business reply mail (BRM) having postage affixed shall be handled the same as other BRM. No effort will be made to identify or separate pieces having postage affixed. Applicable BRM postage and fees will be charged without deducting the amount of any postage stamps affixed.

"However, business reply permit holders may request a credit or refund as provided in 147.22 for the amount of postage affixed to BRM pieces by submitting a completed Form 3533, Application and Voucher for Refund of Postage and Fees, to the Postmaster along with evidence of payment of the amount of excess postage for which a credit or refund is desired.

"In order to receive a refund, business reply permit holders must present to the designated office properly faced and banded packages of 100 business reply envelopes, with identical amounts of postage affixed. A postmaster may accept a package of less than 100 business reply envelopes if necessary to prevent loss or hardship to a mailer. The address side of the envelope may be separated and submitted as evidence in lieu of the entire envelope. Note, however, that the BRM processing fees shall not be refunded."

### SUBJECT: POSTAL RATES FOR BRE's

All account personnel should be aware of the new postal rates regarding postage due for Business Reply Envelopes.

The new charges are:

- \$ .38 -- For clients who have Postage Due accounts open at the perspective Post Offices. This amount applies only if the \$260 account fee has been paid and includes the postage amount of \$.29 plus a \$.09 handling fee.
- \$ .69 -- For clients who have not opened a Postage Due account at the perspective Post Office, and pay for the postage upon receipt of mail. This amount includes postage of \$.29 plus a \$.40 handling fee.

Accounting fee good for clients with over 840 pieces returned per year.



## On Negative Comment Mail

Guilt is a heavy burden to bear, and when you motivate a prospective donor who cannot or will not give you money, that prospect may lash out at you with a complaint.

*The appeals that raise the most money will almost always generate the most complaints.*

Stop reading the negative mail that comes to your organization.

When your mind is full of the negative mail, you are prevented from adopting a positive, creative attitude toward your fund-raising projects . . .

. . . You start creating direct mail pieces that satisfy the needs of the individuals who write the complaint letters. Then you're in trouble, because 99.99% of your donors are happy, or they wouldn't be giving money to you.

## POLICY MEMORANDUM

TO: ASA Clients  
FROM: Ann E. W. Stone  
RE: DECOYS ON YOUR MAILING LIST

It has come to my attention that many of our clients have not sufficiently decoyed (or "salted", which means inserted false names) into their mailing list to prevent theft and to also check on the deliverability of the house file.

Just in case you are not familiar with the different kinds of decoys that should be put into your list, let me list them here for you:

The *standard decoy* is the one where you have your volunteer recipient change his or her last name in some way (Stone becomes Stonehedge), but only for that one particular list. First name changes are good alternatives, as well. This is a standard kind of decoy, but it is not sufficient to do the whole job.

For a *telemarketing decoy*, you must decoy for phone look-up as well as mail match. In the case of a phone look-up, you must have a real person (preferably male) so that when you call telephone information you'll be able to get a phone number for that person.

This is tougher because you must make sure that that person doesn't give to a whole bunch of organizations. This way that person can be readily identifiable as salted on that list. It may be that you simply put an apartment number under the person's address so the mail piece that follows the phone call will have an identifiable decoy.

You must *salt at all levels*, therefore, you must make sure you have salted names not at just the high dollar levels, but throughout your list. We recommend that you salt at the \$10, \$25, and some \$50+ levels.

*To protect against theft by your caging operation and/or by your computer house*, you should do two things: First, send salt names in BRE's so that they go through the caging process. And second have your computer operation insert salt names directly on your list.

(Continued onto next page)

*Special notes:*

Often it is good to use the unusual dollar amounts, and cash in your salt replies again, to check the caging operations and also to check to see how long it takes to receive a thank you letter back. Unusual dollar amounts will clearly show up in your caging tallies and allow you to have a firm handle on how long it took to get your BRE's into the system.

Also, it is good to use this method to check to see how your computer program in future housefile mailings handles the rounding up of unusual dollar amounts.

If you have any questions on any of the aforementioned, please feel free to give us a call. We provide this information as a means of giving our clients even better service. We hope you'll find this information useful.

Make sure the individuals who receive your decoyed mail mark the date a decoy piece arrives in their mailbox and send it back to you promptly! The quicker you catch a thief or a problem the better.

96043271569

**ANN E. W. STONE AND ASSOCIATES, INC.**

CONSULTANTS IN DIRECT RESPONSE MARKETING AND ADVERTISING

**Other Memos  
and Informational Items  
of Interest**

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703/836-7717

9 6 0 4 3 7 7 1 5 7 C

## STEP BY STEP PROCEDURES FOR GETTING OUT A MAILING

1. Copy is written and submitted for approval.
2. At the same time (for prospecting) list research is requested from list broker.
3. List order sheet is submitted to client.
4. Copy and approval sheet are sent to client.
5. Critical dates are logged on planning calendar.
6. Mail Control Plan is filled out for approval and submitted to client with the copy no later than 24 hours after copy approval.
7. Data processing instructions for housefile or for prospect selects (if tape was ordered by list broker) are done.
8. Artist begins to design package components.
9. Production Department will bid jobs and do purchase orders.
10. Receives and checks computer counts.
11. Postage is requested from client (at least two weeks from date due to mailshop). Check art boards.
12. Production Department will release jobs if prices do not exceed MCP. Log prices on MCP and put due date on planning calendar.
13. Blueline approval (client must have signed off on package cost at this point).
14. Delivery is checked three days before being due.
15. Printed samples are checked with computer work.
16. Production Department will do mailing instructions when jobs are released.
17. We check that postage has arrived.
18. We check sealed "live" samples.
19. Receive and check 3602 form from Post Office — 3606 form for first class. Mail schedules are updated with drop counts, any date changes and final package cost.
20. Invoices are prepared and sent to clients.
21. Bluebook pages are prepared & tallied as returns come in.
22. Mailing is closed out after 90 days and final mail schedules are completed and sent to client.



## SOME USEFUL DEFINITIONS

***Ever wonder what the difference was between a Mailing List Broker and a Mailing List Manager?***

### ***List Manager ...***

The Mailing List Manager, as the name implies, provides management services to a list owner who makes his mailing list available on a rental basis. The services provided by a list manager are dependent on the individual management organization and on the expertise and the interest of the list owner as well.

Manager services may include counseling, list computerization, sales, marketing and billing, credit and collection, fulfillment, research survey and response analysis.

A Mailing List Manager is normally empowered to act in behalf of the list owner in all transactions involving the service functions upon which they have agreed.

The List Manager differs from the Broker in that the Broker represents mailers in the buying of all lists. The Manager represents list owners in selling to all Brokers and Mailers.

### ***List Broker ...***

The mailing list broker functions as a direct marketing consultant for the list owner and the user of mailing lists. His services are generally free to the list users.

Broker services include: location of mailing lists; value judgements on list qualities; marketing advice and counsel on the use of mailing lists and/or mailing services; ordering services; etc.

Mail list brokers will circulate list descriptions and prices on broker list data cards, which are available upon request.

Membership in the Mail List Brokers Professional Association or Association of Fundraising Lists Professionals is identified in brokers' listings.

### ***Requirements for membership include:***

1. An independent mail order rental list brokerage house, not connected with any parent organization, that has been in business for at least one year . . .
2. Who represents, solicits and sells 1-time rental addressing of 1,000 or more lists, other than his own.
3. Who rents these lists to twenty (20) or more national mass direct mail users.
4. Who derives the bulk of his income from rental sales.

January 10, 1984

MEMORANDUM

TO: Entire Staff  
FROM: Ann Stone  
RE: Checklist of items that should regularly be sent to the client

Because of questions that have arisen lately; I felt it would be helpful to list below all the items that should be sent to the client on a regular basis:

1. *Copy approval sheets* along with a xerox of the copy and/or a xerox of other components to be included in the package. This may or may not include actual color mock ups of the package.
2. *Mail control plans* (if this is the item the client signs off on for estimated costs) within 24 hours of AS' approval.
3. *List order sheets* within 24 hours of AS' approval.
4. *Pink copies of the purchase orders* (for most clients this should be done on a weekly basis).
5. *Vendor error notification* and/or printed samples (this can be sent along with the purchase orders on a weekly basis).
6. *Mail schedules* — on an every other week (minimum) basis.
7. *Final sealed samples* of the finished package (this also can be sent along with the above on a weekly basis, unless the client requires them immediately after the mail date).

Some clients also require xeroxes of the actual finished art and/or bluelines; it is up to you as the Account Representative on the account to determine what your clients needs are and to alter this procedure to fit them.

## POLICY MEMORANDUM

**TO:** All Vendors  
**FROM:** Ann Stone & Associates  
**RE:** Company Production Policies  
**DATE:** June 15, 1985 (Revised from September 10, 1984)

- I. Effective immediately, the only person from ASA authorized to deal directly with vendors on production matters is the appropriate Production Coordinator.
- II. The following are ASA policies that impact our vendors. We felt it might be helpful to draw them all together in this memo for your review and use:

### 1. Credit References

We maintain credit references for all our clients. These are supplied on request, and if you need credit references for a client, please contact our Production Manager.

### 2. Bids

Due to the fast turnaround of many of our jobs, it is necessary for the Production Coordinator to receive bids back on the same day or within a 24 hour turnaround. Should the estimator have suggestions on how to cut costs for any job, we welcome the advice.

### 3. Purchase Orders

Upon receiving Purchase Orders, please review them — immediately — to make sure that there are no discrepancies as to what's been bid versus what is currently on the Purchase Order.

As many of you know, each Purchase Order has important standard ASA requirements pre-printed on each form and below is an explanation of each requirement.

#### A. All invoices must be accompanied by two samples.

Our clients will return invoices unless they are accompanied by two samples, so please make sure to do this before mailing out an invoice. Also, it would be helpful not only to you, but to ASA, if you would notify us of any problems there are on the invoice before it is sent to the client. This way we can stop problems before they begin.

96043771575

**B. Bill direct to the client named above.**

As you know, it is our policy for vendors to bill all our clients directly. There are several reasons for this:

1. This demonstrates to the client that there are no mark ups.
2. It speeds up getting your bill to the client and the likelihood of getting your bill paid by the client.
3. We have set it up in our contracts that the client will be paying the bill directly, and as you are aware, it is our client and not ASA who is legally responsible for paying your bill.

Also, you should note that all bills to our clients must clearly indicate who the client is and list our ASA job number as well as our purchase order number.

Bills that fail to follow these simple procedures will be returned to you to be corrected. They will not be paid until these procedures are met.

Please call us with any questions. This should not create any problem for you, but let us know if this is not the case.

**C. Bluelines are required**

Unless special written instructions are given to waive a blueline, bluelines are required.

If we do not receive a "real" blueline, we take no responsibility for payment when mistakes are made. It is impossible for us to determine size, final folding, etc, if we do not receive a "real" blueline.

Please remember to question any unusual instructions, especially if they are not in writing on the blueline. It is our company policy that any changes to be made will be marked directly on the blueline.

**D. Notifying ASA on changes, errors or delays**

Notification of late deliveries also includes notification to ASA if there is a problem, a press break down, bindery delay, etc. Ink, stock, or any other component of the mailing piece should only be changed after notifying ASA and getting written approval from an authorized ASA staff member.

**E. Samples**

It is imperative that ASA receive samples of printed pieces within 24 hours of production.

This gives us the opportunity to send samples to the mailshop to begin a mailshopping job, or to send samples to a computer house with instructions for them to begin computerizing a job.

Often it is the case that if we don't receive samples, the job is completely stopped until we do receive them and can check them out for further use.

## POLICY MEMORANDUM

TO: NEW MAILSHOPS  
FROM: ANN STONE AND ASSOCIATES  
RE: ASA REQUIREMENTS OF A MAILSHOP

We are happy to be doing business with you and look forward to a successful and profitable relationship.

As one of our mailshop vendors, you should be aware of our company policies pertaining to mailshops.

**These procedures should be implemented immediately:**

1. Twenty (20) live (off the machine) samples are to be sent to ASA, Inc. the same day the mailing drops.
2. Copies of 3602's or 3606's are to be sent with mailshop invoices that are sent to clients.
3. Originals of 3602's or 3606's are to be sent to client in order to verify date and quantity mailed. Invoices will not be approved until we receive these.
4. If a maildate is going to be missed, contact the appropriate ASA personnel immediately. This is imperative as it could endanger not only the mailing, but also the client's financial well being.

**No exceptions to these procedures will be allowed.**

We rely on these to provide accurate mailing information for our clients and would appreciate your cooperation.

Payment of invoices could be delayed or credit sought if these procedures are not followed.

9604371576



## ASA POLICY MEMORANDUM

TO: All ASA Clients  
FROM: Ann Stone and Associates  
RE: Vendors Who Refuse to Bill Clients Directly

Often, when clients get behind in paying, or (especially political) are new at doing direct mail business in the D.C. area, vendors, at least initially, will refuse to bill the client directly.

In these cases they insist on billing ASA, with those bills being rebilled to the client.

Since ASA not only incurs costs, but is taxed for the "privilege" of passing the bill on to the Client and receiving money back through to pay the vendor, we must assess you a "handling" charge.

It will amount to approximately 7% to 10% of the gross charge. Every effort will be made to avoid these situations since ASA would prefer to proceed as our stated policy (the vendors to bill you directly in the first place).

Call us if you have any questions.

# NEWSLETTERS

## Pointers on Newsletters

### How to make them pay for themselves

1. Every edition of a newsletter should deal with one issue only. Single issue newsletters do best.
2. Write only what will promote and aggrandize the organization. And don't write negative copy. Just promote your own best interests.
3. Hit every subject two times; once in the newsletter and once in the housefile mailing following it.
4. The BRE for every mailing should be a different color, with a teaser in a different colored ink. (The change in colored envelope ensures that the addressee isn't mixing one month up with another.) BRE should be preprinted and coded for each mailing with the return address stating the issue of the month.
5. Every issue should call for some action on the part of the addressee. When you want them to write to a Senator or to a Congressman, enclose the list of all Senators and Congressmen so they will know who to send it to. Do Congressional lists by regions, NE, SE, Mid-West, West Coast, so you can send a smaller list with larger type to people by region. If you can justify computerizing the insert (you have cheap enhance capacity) then do it.
6. **How to do a Budget for 24,000 names**  
Carrier (#10 window is best) cost per thousand  
Newsletter (8½ x 17) cost per thousand  
Reply (has a Cheshire label) cost per thousand (use different colored paper)  
One Sheet Letter cost per thousand  
BRE (change color, special printing) cost per thousand  
Total divided by 24,000 plus postage equals cost of newsletter.
7. Keep testing! Blue and Ivory paper test best.
8. Tell them what you want them to do, and then tell them how to do it.
9. Never ask for money in the newsletter. It is for information. Have a different project each month.
10. Ask for money in the cover letter that accompanies the newsletter and then only do it in the P.S. Very low key. Slip it to them nice and easy again at the bottom of the reply card.

## COMPUTING COSTS FOR PACKAGES

### I. Definitions

1. **Unit Cost or Per Package Cost:** the total cost to produce one individual package.
2. **Per Thousand Cost:** the cost of a thousand of anything; in the case of a complete package, it is the unit cost x 1,000. (I.E., Package "A" cost .37 a piece; cost per thousand is \$370.00)
3. **Total Cost:** the entire cost of a job, (gross cost) not divided by anything. . . as in "This mailing cost \$27,500 to produce." Every cost associated with the mailing, (printing fees, shipping, etc.) must be included!!

### II.

**Actual Cost Calculation:** Notice that your mail control plan has columns for cost per thousand, unit cost, and total cost. It doesn't really matter which one you use to compute your package costs, as long as *you do not mix them up and as long as you can convert from one to the other.*

Remember, some costs will come as totals while others will come in per thousand).

#### Examples:

- A. Mailing "A" had envelopes which cost \$13.76 per thousand. The total quantity for mailing "A" was 52,313. What is the *total cost* of envelopes for mailing "A"? 52.313 (Because you have 52 thousand plus .313 of another thousand)  $\$13.76 = \$719.83$ , total cost of envelopes for mailing "A".
- B. What if you get the total but not the per thousand costs for computer services?

Total computer charges for mailing "A" are \$2,718.43.

$$\frac{\$2,718.43}{52.313} = \$51.96/\text{thousand or } \frac{\text{Cost}}{\text{Quantity}} = \text{Cost per thousand}$$

- C. What if you used special Cheshire labels?

The bill comes in at \$48.66 per thousand but you know there are actually 44 labels per sheet so the actual cost is \$48.66 per 44,000. To get the actual per thousand cost, you do this

$$\frac{44,000}{44} = 1,000 \text{ so } \frac{\$48.66}{44} = \$1.11 \text{ per thousand}$$

The unit cost for fancy labels is .001 (1/10 of a cent) because

$$\frac{1.11}{1,000} = \$0.001$$

# IDEAS FOR STANDARD RESPONSES TO COMMENT MAIL

SOMEONE WHO WRITES US TO ALERT US TO A CHANGE OF ADDRESS AND/OR MISTAKE

Date XX, XXXX

Mr. John Sample  
Anywhere Street  
City, State, Zip Code

Dear Mr. Sample:

Thank you for writing me about the change we need to make in the way we have your name and address listed.

There is a chance that I may have mailed another letter to you incorrectly addressed. If so, please bear with us.

Be assured that measures are being taken to correct the mistake. And all future letters should arrive correctly addressed.

Sincerely,

[Director's Name]  
Title

A CONTRIBUTOR WHO CLAIMS HE IS RECEIVING TOO MUCH MAIL

Date XX, XXXX

Mr. John Sample  
Anywhere Street  
City, State, Zip Code

Dear Mr. Sample:

Recently you wrote me here at [Client Name], and frankly, your letter concerned me. So I made a point of trying to get back to you as soon as possible.

First, let me thank you for your continued interest and generous support of [Client Name].

And let me say, like you, I sometimes get annoyed at the number of letters I receive from groups like [Client Name]. At times they can be bothersome; I know, because lately I seem to be receiving more and more mail.

But you should know that letters like those you receive serve not only to raise money, but also to inform supporters like you of our activities. It's the best way I know to keep you informed.

I hope you agree with me that this communication with supporters like yourself is a vital part of advancing the ideas we believe in.

For my part, I will continue to work hard to put your generous gifts to good use. Together, we will [list purpose or goal].

Your continued support is so greatly needed for our future success, you should know I would never do anything to intentionally upset you.

I hope my letter clears up any problems between us.

Sincerely,

[Director's Name]  
Title

P.S. You may want to consider passing some of my future letters on to your friends if you feel they would benefit from the message the letters contain.



SOMEONE WHO IS INTERESTED IN [CLIENT NAME] -- NON-CONTRIBUTOR

Date XX, XXXX

Mr. John Sample  
Anywhere Street  
City, State, Zip Code

Dear Mr. Sample:

I hope the materials I've enclosed answer any questions you may have about [Client Name].

If it doesn't, please use the enclosed envelope to let me know what other information you require.

I sense from your letter that you may be inclined to support [Client Name]'s work. I hope so. Perhaps the hardest part of my job is finding new supporters. People who give financial support to causes they believe in are truly special and rare individuals.

I should tell you that [Client Name] receives no funds from the government, but is completely sponsored through private contributions from concerned citizens like you. This money is used for [give reasons] and in some cases [give reasons].

Once again, I would like to thank you for your expressed interest in [Client Name] and I hope the information proves helpful.

I hope there's a chance you may decide to support us. We'd love to have you join the [Client Name] team.

Sincerely,

[Director's Name]  
Title

P.S. If you have any further questions, Mr. Sample, I will be glad to try to answer them. I look forward to your support.

SOMEONE WHO APOLOGIZES FOR SENDING A SMALL DONATION

Date XX, XXXX

Mr. John Sample  
Anywhere Street  
City, State, Zip Code

Dear Mr. Sample:

Thank you for your recent letter. I do appreciate your interest and support of [Client Name].

But something you said in your letter disturbs me. You felt your contribution was too small. You apologized because you couldn't send more.

Mr. Sample, you should never feel your continued support of [Client Name] isn't enough. Why, any contribution you decide to send is important. It shows me you're still a part of our team and that means a lot!

We don't rely on "fat cat" contributions. Our average contribution is only \$12.

So please, Mr. Sample, take pride in yourself that you still are willing to support the causes we all believe in. People like you are a rare find.

And please know your gift was greatly needed and put to good use.

I know if you could send more, you would. But it's not the size that's all important; it's the fact that you still care enough to give!

Sincerely,

[Director's Name]  
Title

P.S. We hope you remain an active supporter, Mr. Sample. Our success stories depend on people like you.

9604371593

SOMEONE WHO IS EXPERIENCING HARD TIMES -- PAST CONTRIBUTOR

Date XX, XXXX

Mr. John Sample  
Anywhere Street  
City, State, Zip Code

Dear Mr. Sample:

It troubles me that things are not going well for you.

Of course, I understand you must attend to your personal situation and cannot support us at this time.

Please know that I am most grateful for your past support. I will never forget the loyalty you've shown us.

With your permission, I will continue to send you letters to keep you posted on our activities. Perhaps if your situation improves, you will be able to help us again in the future.

Until that time, just knowing that you are dedicated to all that we are working toward is a great comfort to all of us here at [Client Name].

You have my every best wish. And you have my word that we will continue to work hard to [list goals and purposes].

Sincerely,

[Director's Name]  
Title



# Washington Report

Federal and State Regulatory Issues of Concern

Direct Mail/Marketing Association, Inc.

December 14, 1981

(81-2)

## Doubleday/DMMA Study Shows High Rate of Undelivered 3rd Class Mail

A survey by Doubleday in conjunction with DMMA to determine the extent to which all properly addressed and mailed bulk-third class mail is not delivered revealed that the rate may be as high as eight percent.

Significantly, the survey was designed to encourage the highest probability of delivery. 1,093 active DMMA members volunteered to participate. Home addresses were then solicited to assure an accurate up-to-date list and be more reflective of a typical (non-business) direct mail list.

There were two mailings to each sample. One mailing carried no forwarding endorsement. The other was endorsed "Forwarding and Return Postage Guaranteed." In addition, a control piece was mailed first class to each test respondent to verify the mailing list's accuracy.

Results showed that 8.4 percent of typical advertising pieces without forwarding endorsement and 6.6 percent with the endorsement were not delivered by USPS.

"Hence, the obvious conclusion is that the non-delivered pieces were either lost or destroyed," according to survey analysis.

These results have been brought to the attention of top postal officials at a meeting attended by: Alex Hoffman, Vice President, Doubleday; Jonah Gitlitz, Senior Vice President, Public Affairs; and Richard Barton, Vice President, Government Affairs, DMMA; PMG William Bolger, Deputy PMG Neil Benson, and Sr. Assistant PMG James Jellison.

Bolger expressed and acknowledged that there appears to be a serious problem with third class delivery.

Hoffman, who is also Chairman of the DMMA Government Affairs Committee, reported that the "Postal Service has agreed to take a hard look at current procedures and is evaluating the study to consider future action."

There is a belief that one major reason for the high rate of non-delivery is a lack of understanding by mail carriers and other postal workers of the economic significance of third class mail.

DMMA has pledged its cooperation to work with the USPS in trying to resolve this problem, including the possible development of an educational effort.

# In Conclusion . . .

**W**e hope this booklet has been a help to you as an ASA client.

Please be sure to call us if any of the points are unclear or leave you confused.

We look forward to a long and mutually beneficial working relationship with you and your organization.

As you've heard us say before, the two basic philosophies here at ASA are, "*You get what you give*" and "*No surprises.*"

For our part, we will give you the best service possible and make sure you are kept informed on the progress of your account so that there are "no surprises."

We hope you, as our client, will return these efforts in kind.

Thank you again for using Ann Stone and Associates, Inc.



96043771507  
THIS AGREEMENT made and entered into as of this \_\_\_\_ day of \_\_\_\_\_  
1995 by and between ANN E. W. STONE AND ASSOCIATES, INC., and [NAME OF  
CLIENT], is for direct response consultation, market research and the creation and production of  
housefile and prospect mail packages, telemarketing and media scripts, space ads, marketing  
consultation and public relations support as requested.

ANN E. W. STONE AND ASSOCIATES, INC., (hereinafter ASA) and [NAME OF  
CLIENT] (hereinafter [CN]) agree to the following terms:

I. CONSULTATION SERVICES

- A. Consultation services provided by ASA will include aid in the selection of lists, copy strategy and concept brainstorming, creation and management of house and prospect mail plans, telephone scripts, multi-media, list analysis, and cost analysis.

ASA will also be available to provide third party counsel on management of a "multi-agency" marketing arrangement which would include, if requested, review of contracts, review of copy and strategy proposals, as well as the development of uniform check points and reports to keep an overview of the total program as well as its parts.

- B. ASA will receive a fee of \$\_\_\_\_\_ per month for consultation services, billed at the beginning of each month.
- C. To perform the tasks in Section I-A above, ASA will meet with [CN] up to once per month and will be available for unlimited telephone and mail contact.

ANN E. W. STONE AND ASSOCIATES, INC. CONTRACT AGREEMENT

- D. It is up to [CN] to set up any meetings, giving ASA at least seventy-two (72) hours notice.

II. MARKET RESEARCH

ASA shall advise, as requested, on the creation of focus group research and/or survey research as needed.

ASA compensation of this service shall be negotiated separately on a case by case basis.

III. COPY CREATION

A. Direct Mail Copy.

1. ASA will receive a fee of \$.06 per letter mailed for the creation of copy for each unique prospect mail package or \$3,000, whichever is greater.
2. ASA will receive a fee of \$.06 per letter mailed for the creation of copy for each unique housefile mail package or \$1,500, whichever is greater.
3. There will be a \$25 charge for the creation of copy for "Thank You" acknowledgement letters.
4. If ASA creates a package for the client at their request and the package is approved but not used, the creation fee is still applicable.
5. A unique package is defined as a package where all components, other than envelopes, are new copy.

B. Script/Ad Creation.

1. ASA will receive a minimum fee of \$1,500 each or 17.65% of media placement, whichever is greater, for the creation of space ads, television scripts, and radio scripts. Fees will be negotiated separately on any other special projects requested.
2. ASA will receive a fee of \$750 for each telemarketing script created and \$450 for editing of a telemarketing company's script. ASA may receive a fee of 10% of the total telemarketing cost from [CN]'s program for overseeing and supervising the telemarketing agency. The fee due to ASA will be paid by the telemarketing firm doing [CN]'s program not [CN].

ANN E. W. STONE AND ASSOCIATES, INC. CONTRACT AGREEMENT

C. Copy Approval.

[CN] will advise ASA in writing within ten (10) working days after receipt of any copy, as to whether copy is approved. Copy still pending after that date will be considered approved for billing purposes.

IV. DIRECT MAIL 'PRODUCTION ONLY' SERVICES

- A. ASA production services will include rough art conceptualization, bidding and tracking of printing, arranging for computer work and coordination with the mail house.
- B.
1. ASA will receive a fee of \$0.04 per letter mailed if only ASA production services are provided for the mailing.
  2. There will be a minimum charge of \$1,000 per unique package mailed by ASA.
  3. Any editing by ASA personnel of a package written by [CN] or another agency will be charged at a rate of \$50 per hour with a minimum of \$300.00
- C. Production fees provided herein will be automatically adjusted each contract year by any change upward in the Consumer Price Index.

V. PUBLIC RELATIONS SUPPORT

When requested, ASA public relations personnel will be available for Public Relations support to be billed at the rate of \$100 per hour.

ASA will have the client sign-off on each project with estimated time/cost schedules.

VI. INCENTIVE FEE

- A. ASA will receive a bonus of \$5,000 for every \$50,000 net profit generated through ASA's efforts.
- B. Net profit is defined as money available after all fees for a mailing (postage, printing, creative costs, etc.) or telemarketing, space ad or media costs are paid, as defined and agreed upon by ASA and [CN] in writing.

ANN E. W. STONE AND ASSOCIATES, INC. CONTRACT AGREEMENT

VII. CLIENT APPROVAL/RESPONSIBILITIES

- 9 6 0 4 3 7 1 5 0 0
- A. [CN] will approve all copy, telephone scripts, list broker order sheets, insertion order sheets and cost estimates in writing in advance of any mailing and/or project.
  - B. [CN] authorizes ASA to issue purchase orders in the name of and on behalf of [CN] to purchase work/items for which [CN] has given written permission in Sections III-A, III-B, and Section IV above.
  - C. Work/items purchased by ASA on behalf of [CN] will be invoiced directly to [CN] by the supplier of work/item, and [CN] agrees to be solely responsible for the payment of said invoices.
  - D. [CN] will own all copy, art work, bluelines, and other materials used in mailings except as outlined in Section XIII. But should client themselves mail a package developed by ASA through another agency, ASA will be due fees outlined in Section III.
  - E. [CN] will reimburse ASA for any costs incurred during necessary travel on its behalf when required to do so by [CN].
  - F. [CN] will reimburse ASA for the costs of packaging, faxing, shipping, courier, postage, taxes, duties, telephone calls, fares and telegrams incurred in connection with the performance of this agreement. A small service fee is will be charged on all [CN] reimbursable invoices to help cover the bookkeeping costs incurred.
  - G.
    - 1. [CN] will provide ASA, on a monthly basis:
      - a. copies of vendor bills generated by ASA mailings;
      - b. aging reports including any bills from ASA mailings over sixty (60) days old, and
      - c. "back end" cost data.
    - 2. And, on a daily basis, or as soon as possible thereafter, not to exceed 72 hours, [CN] will provide to ASA tallies of daily mail returns in the format ASA requires.
  - H. Any time spent by ASA personnel on vendor calls due to late payments by client because of client's failure to pay vendor bills shall be billed to [CN] at the hourly rate of \$100 per hour.

VIII. TELEMARKETING SERVICE

ASA reserves the right to arrange for the services of a Telemarketing Agency (TA) if ASA deems it necessary for the best execution of this agreement, provided there is prior written approval by [CN]. All contracts on telemarketing shall be directly between [CN]

## ANN E. W. STONE AND ASSOCIATES, INC. CONTRACT AGREEMENT

and the telemarketing agency, ASA does not sub-contract. However, ASA will coordinate and provide counsel on the telemarketing program(s) on behalf of [CN]. [CN] will approve all scripts in advance.

ASA may collect a standard commission on telemarketing from the TA as stipulated in section III of this contract.

### IX. MULTI-MEDIA PLACEMENT ONLY

If ASA, on behalf of [CN], arranges for ads to be placed in/on newspapers, magazines, television or radio, ASA will receive the standard 17.65% fee on all ads placed.

### X. LIST BROKERAGE SERVICE

Capstone Lists, Inc., through ASA, will be the exclusive list broker for [CN]/ASA packages.

### XI. PAYMENT OF FEES

- A. Payment of any and all copy fees (direct mail or telephone) is due thirty (30) days from the date copy is approved by [CN].
- B. Payment of production fees are due thirty (30) days from the date the package is mailed.
- C. Payment of costs incurred in Sections VII-E and VII-F are due thirty (30) days from receipt of invoice. Billings will be done once per month.
- D. Payment of incentive fee is due thirty (30) days from receipt of the invoice.
- E. Amounts overdue to ASA from [CN] will be subject to a 1-3/4 percent interest charge per month starting when they go over thirty (30) days.
- F. In the event of default in the payment of fees and interest charges, if any, as provided in Section XI-E, [CN] agrees to pay all expenses, including reasonable attorney fees and court costs incurred in the collection of said fees and charges, should judgement be found in favor of the agency. The fees will be due within 30 days of the court's decision.

### XII. CONFIDENTIALITY

- A. The terms of this contract are to be held in strict confidence by ASA and [CN]. Except as required by law, neither party shall discuss or provide copies of this contract to any party outside their respective entities except for legal counsel.
- B. The ASA management systems and forms used in the execution of this agreement



ANN E. W. STONE AND ASSOCIATES, INC. CONTRACT AGREEMENT

have all been copyrighted by ASA and are so marked. Use by the client, except as expressly necessary for the execution of this agreement, is strictly prohibited.

XIII. DISPOSITION OF PROPERTY AND MATERIALS

Upon termination of this agreement, all property and material produced and used under the agreement shall not be considered the property of the client until final payment of all invoices has been made by the client.

XIV. CANCELLATION

- A. In the event that a mailing is cancelled, [CN] is liable for all costs approved in writing incurred up to the point and time of cancellation.
- B. Cancellation of this agreement may be done by either party with sixty calendar (60) day written notice. All bills are due and payable at the point of cancellation.

[NAME OF CLIENT]

ANN E. W. STONE AND ASSOCIATES

By: \_\_\_\_\_

By: Ann E. W. Stone  
President

UPDATED: 02-03-95  
H:\WP\CONTRACT\CONTRACT.ASA

9604371502



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

AUG 5 10 27 AM '96

**SENSITIVE**

August 2, 1996

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Suite 500  
Washington, DC 20005

RE: MUR 3638  
Republican Challengers Committee  
and Robert E. Miller, Jr., as Treasurer

Dear Mr. Sullivan:

Based on a complaint filed with the Federal Election Commission on October 5, 1992, and information supplied by your clients, the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer, the Commission, on September 27, 1994, found that there was reason to believe your clients violated 2 U.S.C. § 441b, and instituted an investigation of this matter.

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

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

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

*Celebrating the Commission's 20th Anniversary*

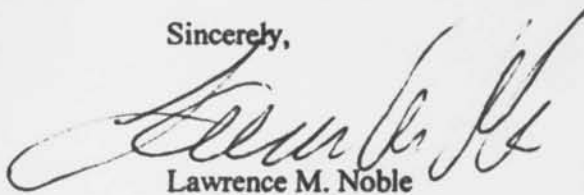
YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

9604371503

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

Should you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble  
General Counsel

Enclosure  
Brief

9604371504

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3638  
Republican Challengers Committee )  
and Robert E. Miller, Jr., as Treasurer, et al. )  
 )

GENERAL COUNSEL'S BRIEF

**I. STATEMENT OF THE CASE**

9 6 0 4 3 7 1 5 0 5  
This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("the Commission") by the Democratic National Committee on October 5, 1992. The Commission found reason to believe that Response Dynamics, Inc. and its associated companies violated 2 U.S.C. § 441b by extending credit outside of the ordinary course of business and that the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer (RCC), violated 2 U.S.C. § 441b by accepting the resulting prohibited contributions.

In this brief, the General Counsel sets forth the factual and legal issues in this matter, and his recommendation regarding whether there is probable cause to believe that such violations occurred. See 11 C.F.R. § 111.16(a).

**II. ANALYSIS**

**A. Facts**

Response Dynamics, Inc. and its associated companies, namely, Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-American Printing Company, and Fulfillment Management Services, Inc., were all founded and are owned by David A. Kunko and

Ronald Kanfer. Clients contract with RDI for the provision of direct marketing services and, in turn, RDI, acting as an agent of the client, enlists the services of its associated companies to carry out certain aspects of the project. RDI and its associated companies together perform direct mail, telemarketing, mailing list brokerage, letter production, filing, printing, and inserting services. Herein, these seven respondents will be referred to collectively as "the companies."

On November 7, 1989, RCC entered into RDI's standard vendor/client contract wherein RDI was appointed as RCC's agent to carry out a direct response fundraising program. Between the time of the contract's inception and its end in June of 1992, RCC accumulated a debt owed to the companies of \$95,027.77, which still exists to date.

## **B. Legal Framework**

### **1. The Act and the Regulations**

The Federal Election Campaign Act of 1971, as amended, ("the Act"), makes it unlawful for any corporation to make a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). The Act also makes it unlawful for any officer or director of a corporation to consent to any corporate expenditures which may be prohibited contributions to candidates or committees. *Id.* The term "contribution" includes any direct or indirect payment, distribution, loan (other than from a bank, pursuant to applicable banking law and regulations, in the ordinary course of business), advance, deposit, or gift of money, or any services, or anything of value. 2 U.S.C. § 441b(b)(2).



Prior to October 3, 1990, the Commission's regulations provided that a corporation could extend credit to a political committee, and the credit would not be considered a contribution, if the credit was extended in the ordinary course of business and the terms were substantially similar to extensions of credit to non-political debtors which were of similar size and risk of obligation. 11 C.F.R. § 114.10 (1989). Also, prior to October 3, 1990, the Commission's regulations included within the definition of contribution the extension of credit by any person for a length of time beyond normal business or trade practice unless the creditor has made a commercially reasonable attempt to collect the debt. 11 C.F.R. § 100.7(a)(4)(1990).

Subsequently, on October 3, 1990, the Commission adopted revised regulations on extensions of credit. The Commission's revised regulations continued to permit commercial vendors to extend credit to a candidate, or political committee, without the extension resulting in a contribution, provided that the credit was extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(b). However, the revised regulations specifically set forth the factors that the Commission will consider in determining whether credit has been extended in the ordinary course of business. The Commission will consider: (1) whether the vendor followed its established procedures and its past practices in approving the extension of credit; (2) whether the vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the vendor's trade or industry.

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11 C.F.R. § 116.3(c).<sup>1</sup> Notably, even prior to the promulgation of the Commission's October 1990 revised regulations, the Commission considered whether extensions of credit conformed to the usual and normal practice within a vendor's industry in determining the permissibility of extensions of credit. See Advisory Opinion 1979-36 (Commission conditioned its approval of a proposed arrangement of extending credit in the direct mail industry upon, *inter alia*, its conformance to "normal industry practice").

Pursuant to Section 116.4, commercial vendors may forgive debts for less than the amount owed and the amount forgiven will not be considered a contribution if the vendors have treated the debt in a commercially reasonable manner. 11 C.F.R. § 116.4(a)-(b). A debt has been treated in a commercially reasonable manner if: (1) the original extension of credit was made in accordance with 11 C.F.R. § 116.3; (2) the political committee has undertaken all reasonable efforts to satisfy the debt; and (3) the vendor has pursued its remedies against the political committee as vigorously as it would pursue its remedies against a nonpolitical debt. 11 C.F.R. § 116.4(d). The debt remedies may include, but are not limited to, oral and written requests for payment, withholding delivery of additional goods or services until overdue debts are satisfied, imposition of charges or penalties, referral of debts to debt collection agencies and litigation. 11 C.F.R. § 116.4(d)(3).

### C. Discussion

The complaint in this matter alleged that RCC was extended "commercially unreasonable" credit by the respondent companies in connection with direct mail and

<sup>1</sup> The effective date of 11 C.F.R. § 116.3, which replaced 11 C.F.R. § 114.10, was October 3, 1990. 55 Fed. Reg., 40376 (October 3, 1990).

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telemarketing fundraising services performed for RCC. Specifically, the complaint alleged that credit extended to RCC was not "extended in the ordinary course of business and the terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." Further, the complaint alleged that "the vendors have failed to make a commercially reasonable attempt to collect the debts from ... RCC," asserting that Response Dynamics has filed suit against another customer to collect unpaid bills, but not against RCC. The complaint concluded that RCC has accepted illegal contributions from the vendors.

In response to the complaint, RCC argues that the Commission's former regulations were in effect in November, 1989 when the RDI/RCC agreement was signed and that, therefore, the Commission's former regulations should be applied in this matter. Relying entirely upon the terms of the Commission's pre-1990 regulations, RCC asserts that the agreement was "made in the ordinary course of RDI's business and on terms which were substantially similar to other RDI agreements made with not only other political committees but non-political entities."

While the Commission's revised regulations specifically identifying the factors that the Commission would consider in determining whether an extension of credit was made in the ordinary course of business were promulgated on October 3, 1990, even prior to the promulgation of those regulations, the regulated community was provided adequate notice that the ordinary course of business in the vendor's industry was a factor that the Commission would consider in determining the legality of extensions of credit. Specifically, in Advisory Opinion 1979-36, which was issued on July 27, 1979, the

Commission addressed precisely the type of extensions of credit involved in this matter and conditioned its approval of the proposed arrangement upon, *inter alia*, the arrangement's conformance to "normal industry practice." Therefore, we reject RCC's implied argument that conformance to the companies' own business practice is the controlling inquiry in determining the legality of the extensions of credit, and herein we apply the "normal industry practice" standard with respect to all of the activity at issue.

RCC further argues that the RDI/RCC contract should be judged by whether it was an arms-length transaction at the time it was executed, not whether the contract resulted in a successful fundraising project. In its response, the companies similarly focus on the terms of the RDI/RCC contract. Specifically, the companies argue that the agreement between the companies and RCC was a standard pre-printed agreement and that the fee charged was the standard rate of \$50.00 per thousand packages mailed.

Further, the companies assert:

After about a year of standard direct mail prospect package testing and remailings to active donors of RCC, the Companies determined that the project did not have the potential that the Companies originally hoped. Based on the results of all work performed by the Companies for RCC, the Companies made a business decision to temporarily reduce the level of mail volume until the political fundraising climate improved.

In the foregoing arguments, the respondents appear to focus only on the underlying agreement between the companies and RCC. However, in determining the legality of extensions of credit, it is necessary to examine whether the companies' continuous extensions of credit under the circumstances surrounding the RDI/RCC relationship conformed to usual and normal industry practices.

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In an effort to ascertain what constitutes usual and normal business practice in the industry in which the respondent companies operate, this Office conducted informal interviews and formal depositions with two individuals who own companies that operate in the same industry.<sup>2</sup> The witnesses testified that it is a usual and normal practice in the industry for companies to extend credit to political action committees (PACs) because there is an expectation that PACs will be around for a long period of time. Relevant to how PACs are viewed in the industry from a creditor's standpoint, one witness stated:

... [P]rovided it's a longstanding political committee ..., the political committee has a more institutional dimension, so that ... if it hits some rough water in one year, chances are it will recover and be a good -- a good paying client in another year, so that suppliers and agencies both tend to take a long view of political committees ...

However, the witnesses' indicated that the foregoing practice of extending credit applies provided that the PAC is a longstanding organization with a reputation of credit worthiness and that the normal view of extensions of credit is very different with respect to new political committees. Specifically, one witness testified that since around 1985 or 1986, it has become "more usual" in the industry for companies to require new political committees to raise seed money that could be escrowed and used to cover any potential

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<sup>2</sup> The two witnesses interviewed are Ann E.W. Stone of Ann E.W. Stone and Associates, Inc., located in Alexandria, Virginia, and Roger M. Craver of Craver, Mathews, Smith & Company, located in Falls Church, Virginia. The witnesses, like the respondent companies, provide direct mail services, as well as other direct response marketing techniques, including telemarketing, to political and non-political clients. The witnesses stated that the industry in which they operate is termed the direct marketing industry. The industry's national association is called the Direct Marketing Association. Ms. Stone testified that she has reviewed direct mail contracts for at least 10-12 agencies, and has served as an expert witness in several cases in which she was required to review such contracts. Mr. Craver testified that over the years he has viewed hundreds of different direct mail contracts.



losses in early mailings or, alternatively, to "keep a very tight rein on [ ] how the money is spent." Relevant to usual practices involving extensions of credit to new versus established, longstanding committees, the other witness testified that the principal factors relied upon in considering whether to extend credit to a client include the reputation of the people involved and, inter alia, whether the company has worked with the individuals before and whether any prior experience with the individuals was positive. The witness also stated that the amount of credit that is going to be extended is an important consideration, stating "[i]t's one thing to extend credit of a limited nature. It's quite another to expose suppliers to enormous risk."

We now address the question of whether the respondent companies' continued extensions of credit to RCC conformed to usual and normal industry practices. The following chart reflects, in the "new debt" column, the extensions of credit made by the respondent companies to RCC from February 1990 through June 1992. The chart also reflects the payments made by RCC to the respondent companies, as well as the net debt owed to the respondent companies by RCC during that period.

Month	New Debt	Payments	Net Debt
February 1990	\$18,606	\$ -0-	\$ 18,606
March 1990	\$ 4,903	\$16,098	\$ 6,930
April 1990	\$48,797	\$ 3,984	\$ 51,743
May 1990	\$23,324	\$12,912	\$ 62,156
June 1990	\$ 4,859	\$15,468	\$ 51,546
July 1990	\$71,695	\$ 9,612	\$113,629
August 1990	\$67,542	\$57,756	\$123,415
September 1990	\$27,479	\$48,287	\$102,606
October 1990	\$14,683	\$14,414	\$102,875
November 26, 1990	\$ 1,632	\$26,673	\$ 77,834
11/27 - 12/31, 1990	\$27,603	\$12,755	\$ 92,682
January 1991	\$15,929	\$18,214	\$ 90,397
February 1991	\$18,312	\$21,655	\$ 87,054

March 1991	\$ 9,297	\$10,274	\$ 86,077
April 1991	\$ 5,724	\$10,314	\$ 81,487
May 1991	\$ 3,718	\$ -0-	\$ 85,206
June 1991	\$ 9,575	\$ 6,266	\$ 88,516
July 1991	\$13,626	\$16,105	\$ 84,327
August 1991	\$12,434	\$ 8,504	\$ 89,966
September 1991	\$ 8,523	\$ 9,189	\$ 89,300
October 1991	\$ 3,292	\$ 1,215	\$ 91,377
November 1991	\$ 85	\$ -0-	\$ 91,463
December 1991	\$ 485	\$ -0-	\$ 91,949
January 1992	\$ 1,058	\$ -0-	\$ 93,000
February 1992	\$ 824	\$ -0-	\$ 93,824
March 1992	\$ 1,385	\$ -0-	\$ 94,209
April 1992	\$ -0-	\$ -0-	\$ 94,209
May 1992	\$ 818	\$ -0-	\$ 95,027
June 1992	\$ -0-	\$ -0-	\$ 95,027

In its response to the complaint, RCC explains that it was formed to support non-incumbent Republican candidates for the U.S. Senate and House of Representatives, and that although RCC believed that this message "would be very attractive to potential Republican contributors, it was seen as a failure after several months. The revenues were not generated to cover expenses and little if any funds were used for purposes other than direct mail costs."

The record reflects that prior to entering the RDI/RCC contract, the companies had business dealings with the chairman of the RCC, Mr. Floyd Brown, during the time that Mr. Brown was associated with the National Security Political Action Committee (NSPAC). At the time that the parties entered the RDI/RCC contract, NSPAC was deeply in debt to the companies as a result of fundraising activities spearheaded by Mr. Brown. The difference in the focuses of the RCC fundraising program and the earlier NSPAC fundraising program (RCC was created to assist congressional campaigns of

Republican candidates in 1990 whereas NSPAC's activities were aimed at assisting the presidential campaign of George Bush in 1988 and, to a lesser extent, to support seven Senate candidates in the same election cycle) may have provided a basis for early optimism and led the companies to undertake the RCC fundraising program. However, the companies' past dealings with Mr. Brown, as well as RCC's newly formed status should have caused the companies to make only very narrow extensions of credit to RCC, if extensions of credit were made at all.

Specifically, the record reflects that Floyd G. Brown, the chairman of RCC, was previously active as a consultant to NSPAC. On April 7, 1986, NSPAC contracted with the companies to carry out its direct response fundraising program, which included NSPAC's 1988 Americans for Bush (AFB) fundraising effort; Mr. Brown headed this effort. In November, 1989, when RCC contracted with the companies for the provision of the direct response fundraising services at issue, NSPAC was carrying over \$1,000,000 in debt to the companies stemming from the fundraising activities in which Mr. Brown was involved. Based on the expert testimony, we conclude that usual and normal industry practices under such circumstances would entail requiring RCC to raise seed money to cover any potential early losses or, at the very least, very narrowly limiting extensions of credit to RCC.

Moreover, notwithstanding past dealings with individuals involved with RCC, the expert testimony indicates that the usual and normal industry practice regarding extending credit to new political committees, like the then newly formed RCC, would be to make very limited extensions of credit. As can be seen on the monthly summary of

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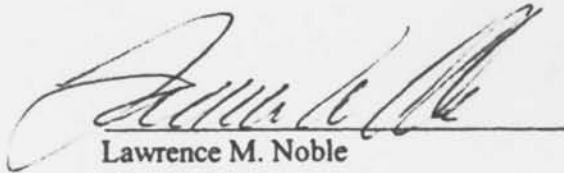
RCC debt, the amount of new debt owed the companies by RCC jumped several fold in July and August, 1990, with net debt owed more than doubling by the end of July, having increased from \$51,546 to \$113,629. While the witnesses' testimony indicates that extending more credit to reduce a client's debt is normal industry practice, the \$71,695 and \$67,542 credit extensions in July and August are disproportionately large considering the newly formed status of the committee and the already existing \$51,546 debt. Therefore, we conclude that the extensions of credit made by the companies to RCC subsequent to June 1990, which total \$315,719, were made outside of the ordinary course of business in violation of 2 U.S.C. § 441b. These extensions therefore resulted in violations of 2 U.S.C. § 441b by RCC.<sup>3</sup>

### III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the Republican Challengers Committee and Robert E. Miller, as treasurer, violated 2 U.S.C. § 441b.

Date

8/2/96

  
Lawrence M. Noble  
General Counsel

<sup>3</sup> RCC further argues that it had no control over whether the companies took sufficient steps to collect the debts and further stated that "the issue of the size of the debt and the attempts by RDI to collect it are irrelevant to the issues involving RCC." Inasmuch as we have concluded that most of the companies' continued extensions of credit to RCC were violative of 2 U.S.C. § 441b on the basis that they were not a part of usual and normal industry practices, we need not address this argument.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 2, 1996

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Suite 500  
Washington, DC 20005

RE: MUR 3638

National Security Political Action Committee  
and Elizabeth I. Fediay, as Treasurer

Dear Mr. Sullivan:

Based on a complaint filed with the Federal Election Commission on October 5, 1992, and information supplied by your clients, the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, the Commission, on September 27, 1994, found that there was reason to believe your clients violated 2 U.S.C. § 441b, and instituted an investigation of this matter.

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

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

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

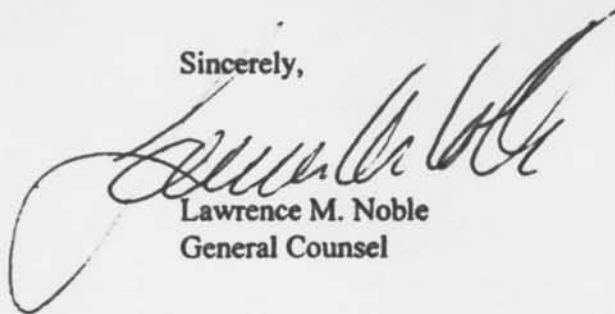
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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence M. Noble", with a large, sweeping flourish extending from the bottom left of the signature.

Lawrence M. Noble  
General Counsel

Enclosure  
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3638  
National Security Political Action Committee )  
and Elizabeth I. Fediay, as Treasurer, et al. )  
 )

GENERAL COUNSEL'S BRIEF

**I. STATEMENT OF THE CASE**

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("the Commission") by the Democratic National Committee on October 5, 1992. The Commission found reason to believe that Response Dynamics, Inc. and its associated companies violated 2 U.S.C. § 441b by extending credit outside of the ordinary course of business and that the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer (NSPAC), violated 2 U.S.C. § 441b by accepting the resulting prohibited contributions.

In this brief, the General Counsel sets forth the factual and legal issues in this matter, and his recommendation regarding whether there is probable cause to believe that such violations occurred. See 11 C.F.R. § 111.16(a).

**II. ANALYSIS**

**A. Facts**

Response Dynamics, Inc. and its associated companies, namely, Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-American Printing Company, and Fulfillment Management Services, Inc., were all founded and are owned by David A. Kunko and

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Ronald Kanfer. Clients contract with RDI for the provision of direct marketing services and, in turn, RDI, acting as an agent of the client, enlists the services of its associated companies to carry out certain aspects of the project. RDI and its associated companies together perform direct mail, telemarketing, mailing list brokerage, letter production, filing, printing, and inserting services. Herein, these seven respondents will be referred to collectively as "the companies."

On April 7, 1986, NSPAC entered into RDI's standard vendor/client contract wherein RDI was appointed as NSPAC's exclusive agent to carry out a direct response fundraising program. Between the time of the contract's inception and its end in May, 1991, NSPAC accumulated a debt owed to the companies of \$1,268,939.19, which still exists to date.

#### **B. Legal Framework**

The Federal Election Campaign Act of 1971, as amended, ("the Act"), makes it unlawful for any corporation to make a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). The Act also makes it unlawful for any officer or director of a corporation to consent to any corporate expenditures which may be prohibited contributions to candidates or committees. *Id.* The term "contribution" includes any direct or indirect payment, distribution, loan (other than from a bank, pursuant to applicable banking law and regulations, in the ordinary course of business), advance, deposit, or gift of money, or any services, or anything of value. 2 U.S.C. § 441b(b)(2).

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Prior to October 3, 1990, the Commission's regulations provided that a corporation could extend credit to a political committee, and the credit would not be considered a contribution, if the credit was extended in the ordinary course of business and the terms were substantially similar to extensions of credit to non-political debtors which were of similar size and risk of obligation. 11 C.F.R. § 114.10 (1989). Also, prior to October 3, 1990, the Commission's regulations included within the definition of contribution the extension of credit by any person for a length of time beyond normal business or trade practice unless the creditor has made a commercially reasonable attempt to collect the debt. 11 C.F.R. § 100.7(a)(4) (1990).

Subsequently, on October 3, 1990, the Commission adopted revised regulations on extensions of credit. The Commission's revised regulations continued to permit commercial vendors to extend credit to a candidate, or political committee, without the extension resulting in a contribution, provided that the credit was extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(b). However, the revised regulations specifically set forth the factors that the Commission will consider in determining whether credit has been extended in the ordinary course of business. The Commission will consider: (1) whether the vendor followed its established procedures and its past practices in approving the extension of credit; (2) whether the vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the vendor's trade or industry.

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11 C.F.R. § 116.3(c).<sup>1</sup> Notably, even prior to the promulgation of the Commission's October 1990 revised regulations, the Commission considered whether extensions of credit conformed to the usual and normal practice within a vendor's industry in determining the permissibility of extensions of credit. See Advisory Opinion 1979-36 (Commission conditioned its approval of a proposed arrangement of extending credit in the direct mail industry upon, inter alia, its conformance to "normal industry practice").

Pursuant to Section 116.4, commercial vendors may forgive debts for less than the amount owed and the amount forgiven will not be considered a contribution if the vendors have treated the debt in a commercially reasonable manner. 11 C.F.R. § 116.4(a)-(b). A debt has been treated in a commercially reasonable manner if: (1) the original extension of credit was made in accordance with 11 C.F.R. § 116.3; (2) the political committee has undertaken all reasonable efforts to satisfy the debt; and (3) the vendor has pursued its remedies against the political committee as vigorously as it would pursue its remedies against a nonpolitical debt. 11 C.F.R. § 116.4(d). The debt remedies may include, but are not limited to, oral and written requests for payment, withholding delivery of additional goods or services until overdue debts are satisfied, imposition of charges or penalties, referral of debts to debt collection agencies and litigation.

11 C.F.R. § 116.4(d)(3).

### C. Discussion

The complaint in this matter alleged that NSPAC was extended "commercially unreasonable" credit by the respondent companies beginning in 1988 in connection with

<sup>1</sup> The effective date of 11 C.F.R. § 116.3, which replaced 11 C.F.R. § 114.10, was October 3, 1990. 55 Fed. Reg., 40376 (October 3, 1990).



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direct mail and telemarketing fundraising services performed for NSPAC. Specifically, the complaint alleged that credit extended to NSPAC was not "extended in the ordinary course of business and the terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." Further, the complaint alleged that "the vendors have failed to make a commercially reasonable attempt to collect the debts from NSPAC," asserting that Response Dynamics has filed suit against another customer to collect unpaid bills, but not against NSPAC. The complaint concluded that NSPAC has accepted illegal contributions from the vendors.

In response to the complaint, NSPAC emphasizes that the RDI/NSPAC contract was entered into before the promulgation in 1990 of the Commission's present regulations governing extensions of credit by corporations. NSPAC argues that the regulations in effect in 1986 required that credit be extended "in the ordinary course of the corporation's business" and that it was NSPAC's understanding that the contract that was being tendered to it for services by RDI was the contract used by RDI in the ordinary course of its business and, therefore, no inordinate credit extension was provided to NSPAC.

While the Commission's revised regulations specifically identifying the factors that the Commission would consider in determining whether an extension of credit was made in the ordinary course of business were promulgated on October 3, 1990, even prior to the promulgation of those regulations, the regulated community was provided adequate notice that the ordinary course of business in the vendor's industry was a factor that the Commission would consider in determining the legality of extensions of credit.

Specifically, in Advisory Opinion 1979-36, which was issued on July 27, 1979, the Commission addressed precisely the type of extensions of credit involved in this matter and conditioned its approval of the proposed arrangement upon, *inter alia*, the arrangement's conformance to "normal industry practice." Therefore, we reject NSPAC's implied argument that conformance to the corporation's own business practice is the controlling inquiry in determining the legality of extensions of credit, and herein we apply, *inter alia*, the "normal industry practice" standard with respect to all of the activity at issue, which occurred between August 1988 and June 1991.

In response to the complaint, the companies argue essentially that the course of dealings between the companies and NSPAC met the Commission's regulatory standards for determining the ordinary course of business, and assert that income received by the companies as a result of the RDI/NSPAC contract "more than offset" NSPAC's debt. Specifically, the companies argue that "the business relationship between the companies and NSPAC met each of the standards set forth in the Commission's regulations," i.e., 1) it followed its established procedures and its past practices in approving the extensions of credit; 2) it received prompt payment in full for previously extended credit to the same political committee; and 3) the extensions of credit conformed to usual and normal practices in the vendors' industry. The companies state:

The companies followed their established procedures and practices in determining to go forward with their business arrangements with NSPAC. In past dealings with principals of NSPAC, they had received prompt payment in full. The underlying agreement between the parties conformed to usual and normal practice in the industry. The contract was a pre-printed standard form agreement regularly used by the companies.... The contract is substantially identical to contracts executed by all of the company's clients. Pursuant to the contract, NSPAC agreed to be billed at

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the companies' standard rates .... The contract also called for NSPAC to pay according to the companies' standard terms of payment.

Relevant to the third prong of the Commission's regulations, the companies focus only on whether the underlying agreement between the companies and NSPAC conformed to usual and normal practices in the industry. Similarly, in its response, NSPAC emphasizes that the RDI/NSPAC contract was RDI's standard contract, and urges the Commission to bifurcate its analysis considering first the original extension of credit, which it argues was "an arms length standard business contract."<sup>2</sup> However, in addition to examining the nature and terms of the RDI/NSPAC contract to determine whether it conformed to usual and normal industry practices, it is also necessary to examine whether the companies' continuous extensions of credit despite NSPAC's enormous and steadily rising debt conformed to usual and normal industry practices. We will consider these questions in turn.

As the discussion regarding the terms of the underlying agreement between the companies and NSPAC will illustrate, not only is the overall nature of the RDI/NSPAC contract contrary to that of contracts usually and normally entered in the industry, the RDI/NSPAC contract is heavily weighted in the companies' favor. We stress, however, that in providing direct mail services to NSPAC, the companies provided something of value, i.e., voter contact which potentially influences federal elections regardless of the

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<sup>2</sup> NSPAC argues that the Commission should focus secondly on NSPAC's attempts to retire its debt to the companies. NSPAC asserts that continuous efforts were made to retire the debt until "it was evident that it was a net loss proposition," and that virtually all net proceeds NSPAC received from February 1989 forward were for purposes of debt retirement, not new contributions or projects. See discussion of debt retirement efforts, infra at p. 18.

amount of money raised. Under the terms of the RDI/NSPAC contract, compensation of approximately \$1.3 million is due the companies for the rendering of those direct mail services. This is true irrespective of the existence of additional contract provisions that economically benefit the companies.

In an effort to ascertain what constitutes usual and normal business practice in the industry in which the respondent companies operate, this Office conducted informal interviews and formal depositions with two individuals who own companies that operate in the same industry.<sup>3</sup> Contrary to the companies' assertions, the witnesses testified that the overall nature of the RDI/NSPAC relationship is not usual and normal in the industry. One witness testified that there was a radical shift in usual and normal practices in the industry during 1984-1985, and that during that period, it became other than usual and normal in the industry for a company to co-own a PAC's mailing lists during the course of the contract, which is an extremely lucrative arrangement for a company. In addition, during that time period, it became other than usual and normal in the industry for contracts to grant companies the right to exclusively carry out the client's fundraising

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<sup>3</sup> The two witnesses interviewed are Ann E.W. Stone of Ann E.W. Stone and Associates, Inc., located in Alexandria, Virginia, and Roger M. Craver of Craver, Mathews, Smith & Company, located in Falls Church, Virginia. The witnesses, like the respondent companies, provide direct mail services, as well as other direct response marketing techniques, including telemarketing, to political and non-political clients. The witnesses stated that the industry in which they operate is termed the direct marketing industry. The industry's national association is called the Direct Marketing Association. Ms. Stone testified that she has reviewed direct mail contracts for at least 10-12 agencies, and has served as an expert witness in several cases in which she was required to review such contracts. Mr. Craver testified that over the years he has viewed hundreds of different direct mail contracts.

project; non-exclusive contracts became the norm. The witness commented that

"exclusive contracts are like prison sentences," and explained:

Well, if it is an exclusive contract, and it has a term of duration, and it has an extremely long termination clause, what that basically does is, it gives the client no option. They are wedded, for worse or for worse, to that agency. And they have no ability, because the agency usually, under those terms, also controls the list for the term of that contract. And in many cases, it ... co-owns [the lists].... And if they control the client's message getting out and they control the client's resource of the list, they control the client.

The witness stated that in exclusive contracts, the client's ability to terminate the contract is usually hindered in two ways - - there is a long termination period and generally all debts are due and payable upon termination. The witness stated:

And [in] a lot of the exclusive contracts, the agency has so much control that very often it's in the agency's interest and the incentive is there for the agency to abuse [the client] and to get the client into debt, because then the client can't cancel because then they have a huge debt that is owed and payable right then.

When asked why a direct mail company might want to keep a client in its control when a client is unable to pay its debt, the witness stated that many companies do it for the billings. The witness explained that if a company has billings and it's a large corporation that has a line of credit with a bank, one of the things they have to report to the bank is how much they are billing. Billings affect how a company's balance sheet looks; companies can get lines of credit based on the billings that are outstanding. In addition, the witness stated that some companies may believe that eventually the debt will be paid.

With regard specifically to the RDI/NSPAC contract, the witness pointed out that the contract provided for exclusive representation by RDI of NSPAC in carrying out NSPAC's fundraising program; co-ownership of the mailing lists during the term of the

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contract; a 5-year contract duration; a 150-day contract termination period; and the requirement that NSPAC pay RDI \$25,000 if the contract is terminated prior to the 5-year duration. The witness explained that these provisions work together to the disadvantage of the client, subjecting the client to a form of "indentured servitude." The witness also pointed out that the RDI/NSPAC contract entitled RDI to unlimited use of mailing lists during the term of the agreement, and prohibited the client from renting any list created under the contract without RDI's prior written approval. The witness explained that the provision restricting the client's ability to use its mailing lists has not been a usual and normal contract provision in the industry "since about 1975, at the latest 1978." The witness further commented that the provision makes the mailing lists the agency's property, not the client's. With respect to this provision, the other witness stated:

It's - it's unusual and, frankly, outrageous. The capacity of a client to control its own data, its own donors, is fundamental to the process of fundraising, whether it's a political committee or a charity, and the whole issue of what fundraising is and the fact that the public is involved with giving money ... comes into play here. I mean, this is highly unusual.

As a whole, this witness characterized the relationship created under the RDI/NSPAC contract as "one of jailer and prisoner" and commented that "there is no substantial freedom for the client. There is every freedom for the agency. It is quite a one-sided contract." Based on the foregoing testimony, we conclude that the underlying agreement between the companies and NSPAC did not conform to usual and normal practices within the industry. Again, however, we emphasize that although the underlying agreement between the companies and NSPAC ultimately worked to NSPAC's disadvantage, in providing direct mail fundraising services, the companies provided something of value to

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NSPAC -- voter contact that potentially influences federal elections no matter how much money is raised -- for which approximately \$1.3 million is due pursuant to the terms of the RDI/NSPAC contract.<sup>4</sup> This is not negated by the fact that NSPAC entered a contract that contained terms that were ultimately more favorable to the companies.

We now turn to the question of whether the respondent companies' continued extensions of credit to NSPAC despite NSPAC's rising debt conformed to usual and normal industry practices. With regard to the NSPAC debt, the companies explained:

In October [1988] a business decision was made to mail approximately 3 million letters on previously tested lists. The projection indicated that the mailing would net more than \$700,000. The actual results of the mailings were a loss of about \$400,000. The difference between the projected gain and the actual loss on this mailing was over one million dollars and nearly accounts for the entire debt that NSPAC has with RDI and related companies. RDI believes the variation in the projection verses actual on this particular mailing was due to the increasing point spread in the polls in the final month before the Bush-Dukakis election.

The companies further assert that they "received prompt payment from NSPAC on its invoices through October 1988" and that "the relationship between the companies and NSPAC was an arm's-length commercial transaction that was a financial success for these companies in spite of the currently outstanding debt." In response to the allegation in the complaint that the amount of debt owed the seven vendors is "disproportionate to the size of the vendors and to the political committees involved," the companies assert that NSPAC had receipts and expenditures of more than \$10.27 million. "NSPAC's total unpaid debt to the companies is approximately \$1.3 million, or less than 15% of gross

<sup>4</sup> The testimony of the witnesses deposed indicates that the compensation provisions contained in the RDI/NSPAC contract were generally within the range of usual and normal charges in the industry.

income for the total project. NSPAC's debt to total income ratio for this project is better than the companies' average client debt to total income ratio."

Citing MUR 216/239 (1976), the respondent companies argue that courts "will not intervene in business decisions motivated by a rational purpose and made in good faith." The companies state:

Surely no business purpose is more rational than the companies' purpose in entering into a contractual relationship with NSPAC: the realization of profit. This relationship required the companies to take the risk that they would be forced to write off a large debt if NSPAC became insolvent. The Companies were willing to take that risk in return for the possibility that they would realize significant profits from the contract. That the companies' position was reasonable is borne out by the profits they ultimately did realize, profits that dramatically outweigh the loss resulting from the companies' failure to collect the NSPAC debt .... The complainant has made no showing that the companies acted with any motive other than a desire to earn a profit. The companies have earned more net income from work performed on this one NSPAC account than any other account they have handled within the same time frame.

Regarding income generated from the RDI/NSPAC contract, the respondent companies argue that as a result of the companies' co-ownership of the mailing lists created pursuant to the agreement with NSPAC, they have continued to earn "significant net dollars" and expect to do so "over the next four years." "List rental income earned from the Americans for Bush mailing list of 128,000 names and new accounts produced

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as a result of publicity over this project has more than offset all \$1.3 million owed to the companies."<sup>5</sup>

Initially, we reject the companies' argument that list rental income earned from use of NSPAC's mailing list and new accounts produced as a result of publicity "offsets" the \$1.3 million debt owed by NSPAC to the companies. Under the terms of the contract, the companies' use of NSPAC's mailing list and profits deriving therefrom were not

<sup>5</sup> Specifically, the respondent companies stated that the amount of additional revenue it realized resulting from the usage of NSPAC's Americans for Bush mailing list is as follows:

(a) AFB mailing list rental income:

1988	\$ 51,526.11
1989	273,207.63
1990	36,360.32
1991	60,303.00
1992	90,102.45
1993	<u>73,785.41</u>
Total	\$585,284.92

(b) Estimated second generational list rental: Total of 4 million names rented at 2% = 80,000 names acquired and added to second generation lists. This is a conversion rate of 66% or 2/3 of the AFB list being added to other agency client lists. Estimated additional income for the six year period would be 2/3 of the amount generated by the AFB list or \$400,000.

(c) Increase in business for all RDI companies as a result of the increase in size of all client mailing lists who have mailed the AFB list would be calculated by estimating the total number of direct mail pieces produced that would not otherwise be produced if the AFB list never existed.

Estimation: AFB list direct rentals = 4,000,000 extra direct mail pieces produced. Second generation rentals = 2,600,000 extra direct mail pieces produced. Total extra direct mail pieces produced = 6,600,000. Estimated additional revenue to RDI and related companies from the usage of the AFB mailing list is over \$2,500,000.

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linked to compensation for services rendered. The companies' right to use NSPAC's mailing list was stated in absolute form and therefore represented a source of income over and above compensation for services provided. That the use of the NSPAC mailing list represented a bargained for source of income in addition to compensation is borne out by the fact that the companies have not applied the income resulting from use of NSPAC's mailing list to NSPAC's debt. Despite the companies' claim of receiving substantial income as a result of using the NSPAC mailing list, none of this income has been applied to NSPAC's approximately \$1.3 million debt to the companies. NSPAC continues to report the debt to date. Moreover, the terms of the RDI/NSPAC contract clearly contemplate that RDI would be entitled to unlimited use of mailing lists created under the contract "without any payment of any nature whatsoever by the Agency to the client."<sup>6</sup> This language specifically negates that there would be a credit to NSPAC, or an offsetting of NSPAC's debt, based on income received by the companies from use of NSPAC's mailing list.<sup>7</sup> Consequently, evidence regarding the overall profitability of the contractual relationship is irrelevant.<sup>8</sup>

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<sup>6</sup> The actual text of the RDI/NSPAC contract provision is as follows:

The Client, its officers and/or representatives shall not during the term of this Agreement, or at any time subsequent thereto, rent, exchange, donate, sell or otherwise provide any list(s) created under this Agreement to any third party for any reason whatsoever without the prior written approval of the Agency. The Agency shall be entitled to unlimited use of the same both during the term of this Agreement and at all times subsequent thereto without any payment of any nature whatsoever by the Agency to the Client.

<sup>7</sup> In addition, the expert testimony indicates that it is not usual or normal in the industry for a company that has contracted with a client on terms such as those contained in the RDI/NSPAC contract, i.e., provisions granting co-ownership of a client's mailing list



We now address the pivotal question of whether the respondent companies' continued extensions of credit to NSPAC were done in the ordinary course of business. The following chart reflects, in the "new debt" column, the extensions of credit made by the respondent companies to NSPAC from August 1988 through June 1991.<sup>9</sup> The chart also reflects the payments made by NSPAC to the respondent companies, as well as the net debt owed to the respondent companies by NSPAC during that period.

Month	New Debt	Payments	Net Debt
August 1988	\$950,830	\$429,533	\$1,445,421
September 1988	\$940,328	\$860,981	\$1,524,798
October 1-19, 1988	\$475,546	\$767,851	\$1,232,492
Oct.20-Nov.28 1988	\$229,032	\$507,470	\$ 902,016
Nov.29 - Dec.31 '88	\$ 87,522	\$ 20,729	\$ 987,115
January 1989	\$ 69,138	\$ 80,090	\$ 976,162

during the term of the contract, to offset or issue a credit against the client's debt based on the amount of income received as a result of their use of the client's mailing list. Further, the witnesses stated that issuing a credit to a client based on the remaining two categories of income claimed by the companies -- second generation rental income and an overall across the board increase in business volume, *see* note 5, *supra*, -- is not a usual and normal business practice in the industry.

<sup>8</sup> To the extent that the companies' continued emphasis on the profitability of its relationship with NSPAC may indicate that the companies wish to forgive NSPAC's approximately \$1.3 million debt, we note that the Commission has regulations governing a corporation's ability to do so. *See* 11 C.F.R. § 116.4 (corporation may not forgive debt of political committee for less than amount owed unless, *inter alia*, initial extension of credit was made in ordinary course of business).

<sup>9</sup> Although the RDI/NSPAC relationship commenced in April 1986, the analysis herein focuses only on extensions of credit occurring between August 1988 and June 1991 inasmuch as in MUR 2638 the Commission found no reason to believe that the companies had extended credit outside of the ordinary course of business for the period between April 1986 through July 1988. In addition, in light of the apparent early success of the RDI/NSPAC fundraising program, for the period at issue - August 1988 through June 1991 - we do not view NSPAC as a new committee in considering the companies' extensions of credit, but instead view it as having established a successful track record with RDI prior to that period.

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February 1989	\$ 59,590	\$ 24,000	\$1,011,758
March 1989	\$ 64,716	\$ 43,645	\$1,032,868
April 1989	\$ 19,992	\$ 10,600	\$1,042,138
May 1989	\$ 16,638	\$ 0	\$1,058,800
June 1989	\$ 36,726	\$ 2,820	\$1,092,683
July 1989	\$ 39,123	\$ 20,040	\$1,112,753
August 1989	\$ 15,883	\$ 0	\$1,128,636
September 1989	\$ 38,838	\$ 1,686	\$1,165,774
October 1989	\$ 13,756	\$ 520	\$1,174,017
November 1989	\$ 8,088	\$ 4,921	\$1,182,182
December 1989	\$ 53,388	\$ 24,058	\$1,211,512
January 1990	\$ 32,635	\$ 44,373	\$1,199,774
February 1990	\$ 37,085	\$ 21,825	\$1,215,034
March 1990	\$ 8,407	\$ 12,919	\$1,210,522
April 1990	\$ 18,831	\$ 5,000	\$1,224,353
May 1990	\$ 10,011	\$ 10,929	\$1,223,434
June 1990	\$ 21,151	\$ 9,203	\$1,235,383
July 1990	\$ 7,569	\$ 16,388	\$1,226,564
August 1990	\$ 10,792	\$ 10,518	\$1,226,841
September 1990	\$ 5,209	\$ 4,778	\$1,227,269
Oct. 1-17, '90	\$ 6,543	\$ 3,481	\$1,230,330
Oct. 18-Nov. 28 '90	\$ 14,574	\$ 5,938	\$1,239,276
Nov. 29-Dec. 31 '90	\$ 10,837	\$ 377	\$1,249,774
January 1991	\$ 4,562	\$ 5,159	\$1,249,179
February 1991	\$ 61,890	\$ 45,563	\$1,265,510
March 1991	\$ 17,670	\$ 10,400	\$1,272,777
April 1991	\$ 4,336	\$ 8,000	\$1,269,113
May 1991	\$ 1,326	\$ 1,500	\$1,268,939
June 1991	\$ 0	\$ 0	\$1,268,939

In an effort to gauge whether the respondent companies' continued extensions of credit would be considered to be a usual and normal practice in the industry, this Office asked the witnesses to consider, in a hypothetical context, the respondent companies' continued extensions of credit to NSPAC despite NSPAC's rising debt to the companies. The situation posed, which reflects the actual course of dealings between the companies and NSPAC, was as follows:

A client has a five-year contract with a direct mail company for carrying out a direct response fund-raising program. At the end of the second year of the program, the client's debt was only 13% of the client's income. At the end of the third year, the client's debt was 300% of its income. And at the end of the fourth year, the client's debt was 533% of its income.

End of 1st Year	Dec. 1987	ratio unknown
End of 2nd Year	Dec. 1988	debt = 13% of income
End of 3rd Year	Dec. 1989	debt = 300% of income
End of 4th Year	Dec. 1990	debt = 533% of income
Contract Ended	April 1991	ratio unknown

One witness' initial response to this scenario was:

That the client was not monitoring the program very well, or the agency was not providing proper information to the client, and that both the agency and the client were out of their minds to get that far out [in debt].

The other witness responded:

My initial response is, what in the world is going on here? There is no pattern here that is usual, in terms of making investment in building a donor base or building an income structure for a client. The normal process is the debt would be 500 times income in the first year, 300 times in the second year, and none or little in the third year. This is going in the reverse order, and what the reason could be, I can only speculate, but ... among the things that could be happening is that the political committee could be being used by the [company] to build a mailing list or to ... do something that, if the [company] is funding it, is a potential transfer of political money for purposes other than fundraising. There is no legitimate five-year fund-raising goal that is being met in this situation....

Regarding when the witnesses would have stopped extending credit to the client under the scenario posed, the latter witness stated that the witness' company "would have

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discontinued [mailings] certainly by the end of the second year as I saw the trend going up...." The witness explained that in this situation, it will be nearly impossible to recover the debt and to provide the political committee with net income.

The witnesses' testimony establishes that the continuous extensions of credit by the companies to NSPAC are neither usual or normal in the industry nor a part of a "commercially reasonable" attempt to collect on the debts owed. Specifically, as noted previously, the witnesses stated respectively, that the companies and the committee had to be "out of their minds" to get that far out in debt, and that the witness would have discontinued mailings by the end of the second year because under the RDI/NSPAC debt scenario it would be nearly impossible to recover the debt and to provide the political committee with net income.

One witness acknowledged that the scenario would be viewed differently if the debt resulted from one large unsuccessful mailing. Although respondents identify the failure of the large-scale 1988 fundraising effort, in which approximately three million letters were mailed at once, as a primary reason for the NSPAC debt, and assert that subsequent mailings were done for the purpose of reducing the NSPAC debt, a review of records and actual mailings provided by the companies reveals that several mailings mailed subsequent to the 1988 unsuccessful mass mailing, including several done in 1990 and 1991, were not aimed at reducing the NSPAC debt.<sup>10</sup> Instead these mailings

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<sup>10</sup> The witnesses indicated that when a company does mailings solely for the purpose of debt reduction, all of the returns from the mailings would be used to reduce the client's debt, none would be given to the client for program purposes. The witnesses stated that, for ethical reasons and to avoid committing mail fraud, such mailings must convey to potential donors that debt reduction is what the money will be used for, so that the public

contained solicitations for purposes such as to lobby Congress to support the conservative agenda, to defeat or re-elect certain candidates, or to re-elect conservative candidates. In addition, the record further reflects that NSPAC made \$12,150 in direct contributions to candidates in 1989, and \$2,150 in direct contributions in 1990.

By June 1989, at the latest, it should have been very clear to both RDI and NSPAC that any efforts toward fundraising, the stated goal of the RDI/NSPAC contract, or toward reducing NSPAC's debt were not working. The extensions of credit by the companies subsequent to the 1988 unsuccessful mass mailing, with rare exceptions, consistently increased the NSPAC debt. Between December 1988 and the end of May 1989, NSPAC's debt rose from \$987,115 to \$1,058,800, an increase of \$71,685. NSPAC's payments to the companies during this five-month period totaled \$179,064, while the new debt incurred by NSPAC assertedly to reduce the debt totaled \$317,596. It should be noted that the new debt of \$36,726 reported for June 1989 followed no payments by NSPAC in May, and the new debt of \$38,838 in September 1989 followed no payments in August. Therefore, this Office concludes that, at the latest, the extensions of credit made by the respondent companies to NSPAC subsequent to May 1989, which total \$479,230, were made outside of the ordinary course of business in violation of Section 441b.<sup>11</sup> These extensions therefore resulted in violations of 2 U.S.C. § 441b by NSPAC.

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does not think that its donations are going toward the client's programs when the money will be used solely to reduce the client's debt.

<sup>11</sup> With respect to the complainant's assertion that the companies did not make a commercially reasonable attempt to collect the NSPAC debt, the companies argue that



### III. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe that the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. § 441b.

Date

8/2/96

  
Lawrence M. Noble  
General Counsel

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the Commission's regulations require the filing of suit against debtors only if it is commercially reasonable to do so. The companies state that:

[p]resumably, commercial reasonableness does not require a business to expend a substantial sum of money in pursuit of a debt that may not be possible to collect .... Because NSPAC is insolvent, any attempt by the companies to collect the debt owed to them would likely be fruitless.

Inasmuch as we have concluded that most of the companies' continued extensions of credit to NSPAC, which the companies extended assertedly in an effort to reduce NSPAC's debt were violative of 2 U.S.C. § 441b on the bases that they were neither made in the ordinary course of business nor a part of a commercially reasonable attempt to collect the NSPAC debt, we need not address this argument.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 2, 1996

William H. Schweitzer, Esquire  
E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, NW, Suite 1100  
Washington, DC 20036

RE: MUR 3638  
Response Dynamics, Inc., et al.

Dear Mr. Schweitzer:

Based on a complaint filed with the Federal Election Commission on October 5, 1992, and information supplied by your clients, Response Dynamics, Inc., and its associated companies, Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-American Printing Company, and Fulfillment Management Services, Inc., the Commission, on September 27, 1994, found that there was reason to believe your clients violated 2 U.S.C. § 441b, and instituted an investigation of this matter.

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

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

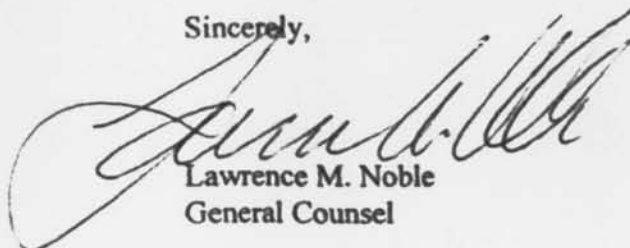
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If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated.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

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

Should you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble  
General Counsel

Enclosure  
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3638  
Response Dynamics, Inc., et al. )  
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GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("the Commission") by the Democratic National Committee on October 5, 1992. The Commission found reason to believe that Response Dynamics, Inc. and its associated companies violated 2 U.S.C. § 441b by extending credit outside of the ordinary course of business to the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer (NSPAC), and the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer (RCC).

In this brief, the General Counsel sets forth the factual and legal issues in this matter, and his recommendation regarding whether there is probable cause to believe that such violations occurred. See 11 C.F.R. § 111.16(a).

II. ANALYSIS

A. Facts

Response Dynamics, Inc. and its associated companies, namely, Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-American Printing Company, and Fulfillment Management Services, Inc., were all founded and are owned by David A. Kunko and

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Ronald Kanfer. Clients contract with RDI for the provision of direct marketing services and, in turn, RDI, acting as an agent of the client, enlists the services of its associated companies to carry out certain aspects of the project. RDI and its associated companies together perform direct mail, telemarketing, mailing list brokerage, letter production, filing, printing, and inserting services. Herein, these seven respondents will be referred to collectively as "the companies."

On April 7, 1986, NSPAC entered into RDI's standard vendor/client contract wherein RDI was appointed as NSPAC's exclusive agent to carry out a direct response fundraising program. Between the time of the contract's inception and its end in May, 1991, NSPAC accumulated a debt owed to the companies of \$1,268,939.19, which still exists to date.

On November 7, 1989, RCC entered into RDI's standard vendor/client contract wherein RDI was appointed as RCC's agent to carry out a direct response fundraising program. Between the time of the contract's inception and its end in June of 1992, RCC accumulated a debt owed to the companies of \$95,027.77, which still exists to date.

#### **B. Legal Framework**

The Federal Election Campaign Act of 1971, as amended, ("the Act"), makes it unlawful for any corporation to make a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). The Act also makes it unlawful for any officer or director of a corporation to consent to any corporate expenditures which may be prohibited contributions to candidates or committees. *Id.* The term "contribution" includes any direct or indirect payment, distribution, loan (other

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than from a bank, pursuant to applicable banking law and regulations, in the ordinary course of business), advance, deposit, or gift of money, or any services, or anything of value. 2 U.S.C. § 441b(b)(2).

Prior to October 3, 1990, the Commission's regulations provided that a corporation could extend credit to a political committee, and the credit would not be considered a contribution, if the credit was extended in the ordinary course of business and the terms were substantially similar to extensions of credit to non-political debtors which were of similar size and risk of obligation. 11 C.F.R. § 114.10 (1989). Also, prior to October 3, 1990, the Commission's regulations included within the definition of contribution the extension of credit by any person for a length of time beyond normal business or trade practice unless the creditor has made a commercially reasonable attempt to collect the debt. 11 C.F.R. § 100.7(a)(4) (1990).

Subsequently, on October 3, 1990, the Commission adopted revised regulations on extensions of credit. The Commission's revised regulations continued to permit commercial vendors to extend credit to a candidate, or political committee, without the extension resulting in a contribution, provided that the credit was extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(b). However, the revised regulations specifically set forth the factors that the Commission will consider in determining whether credit has been extended in the ordinary course of business. The Commission will consider: (1) whether the vendor followed its established procedures and its past practices in approving the extension of

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credit; (2) whether the vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the vendor's trade or industry.

11 C.F.R. § 116.3(c).<sup>1</sup> Notably, even prior to the promulgation of the Commission's October 1990 revised regulations, the Commission considered whether extensions of credit conformed to the usual and normal practice within a vendor's industry in determining the permissibility of extensions of credit. See Advisory Opinion 1979-36 (Commission conditioned its approval of a proposed arrangement of extending credit in the direct mail industry upon, *inter alia*, its conformance to "normal industry practice").

Pursuant to Section 116.4, commercial vendors may forgive debts for less than the amount owed and the amount forgiven will not be considered a contribution if the vendors have treated the debt in a commercially reasonable manner. 11 C.F.R. § 116.4(a)-(b). A debt has been treated in a commercially reasonable manner if: (1) the original extension of credit was made in accordance with 11 C.F.R. § 116.3; (2) the political committee has undertaken all reasonable efforts to satisfy the debt; and (3) the vendor has pursued its remedies against the political committee as vigorously as it would pursue its remedies against a nonpolitical debt. 11 C.F.R. § 116.4(d). The debt remedies may include, but are not limited to, oral and written requests for payment, withholding delivery of additional goods or services until overdue debts are satisfied, imposition of charges or penalties, referral of debts to debt collection agencies and litigation.

11 C.F.R. § 116.4(d)(3).

<sup>1</sup> The effective date of 11 C.F.R. § 116.3, which replaced 11 C.F.R. § 114.10, was October 3, 1990. 55 Fed. Reg., 40376 (October 3, 1990).

### C. Discussion

The complaint in this matter alleged that NSPAC and RCC have each been extended "commercially unreasonable" credit by the respondent companies beginning in 1988 in connection with direct mail and telemarketing fundraising services performed for NSPAC, and continuing into 1992 in the form of like services performed for RCC. Specifically, the complaint alleged that credit extended to NSPAC and RCC was not "extended in the ordinary course of business and the terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." Further, the complaint alleged that "the vendors have failed to make a commercially reasonable attempt to collect the debts," asserting that Response Dynamics has filed suit against another customer to collect unpaid bills, but not against NSPAC or RCC. The complaint concluded that NSPAC and RCC have accepted illegal contributions from the vendors.

#### 1. RDI/NSPAC

In response to the complaint, NSPAC emphasizes that the RDI/NSPAC contract was entered into before the promulgation in 1990 of the Commission's present regulations governing extensions of credit by corporations. NSPAC argues that the regulations in effect in 1986 required that credit be extended "in the ordinary course of the corporation's business" and that it was NSPAC's understanding that the contract that was being tendered to it for services by RDI was the contract used by RDI in the ordinary course of its business and, therefore, no inordinate credit extension was provided to NSPAC.

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While the Commission's revised regulations specifically identifying the factors that the Commission would consider in determining whether an extension of credit was made in the ordinary course of business were promulgated on October 3, 1990, even prior to the promulgation of those regulations, the regulated community was provided adequate notice that the ordinary course of business in the vendor's industry was a factor that the Commission would consider in determining the legality of extensions of credit. Specifically, in Advisory Opinion 1979-36, which was issued on July 27, 1979, the Commission addressed precisely the type of extensions of credit involved in this matter and conditioned its approval of the proposed arrangement upon, *inter alia*, the arrangement's conformance to "normal industry practice." Therefore, we reject NSPAC's implied argument that conformance to the corporation's own business practice is the controlling inquiry in determining the legality of extensions of credit, and herein we apply, *inter alia*, the "normal industry practice" standard with respect to all of the activity at issue, which occurred between August 1988 and June 1991.

In response to the complaint, the companies argue essentially that the course of dealings between the companies and NSPAC met the Commission's regulatory standards for determining the ordinary course of business, and assert that income received by the companies as a result of the RDI/NSPAC contract "more than offset" NSPAC's debt. Specifically, the companies argue that "the business relationship between the companies and NSPAC met each of the standards set forth in the Commission's regulations," i.e., 1) it followed its established procedures and its past practices in approving the extensions of credit; 2) it received prompt payment in full for previously extended credit to the same

political committee; and 3) the extensions of credit conformed to usual and normal practices in the vendors' industry. The companies state:

The companies followed their established procedures and practices in determining to go forward with their business arrangements with NSPAC. In past dealings with principals of NSPAC, they had received prompt payment in full. The underlying agreement between the parties conformed to usual and normal practice in the industry. The contract was a pre-printed standard form agreement regularly used by the companies.... The contract is substantially identical to contracts executed by all of the company's clients. Pursuant to the contract, NSPAC agreed to be billed at the companies' standard rates .... The contract also called for NSPAC to pay according to the companies' standard terms of payment.

Relevant to the third prong of the Commission's regulations, the companies focus only on whether the underlying agreement between the companies and NSPAC conformed to usual and normal practices in the industry. Similarly, in its response, NSPAC emphasizes that the RDI/NSPAC contract was RDI's standard contract, and urges the Commission to bifurcate its analysis considering first the original extension of credit, which it argues was "an arms length standard business contract."<sup>2</sup> However, in addition to examining the nature and terms of the RDI/NSPAC contract to determine whether it conformed to usual and normal industry practices, it is also necessary to examine whether the companies' continuous extensions of credit despite NSPAC's enormous and steadily rising debt conformed to usual and normal industry practices. We will consider these questions in turn.

<sup>2</sup> NSPAC argues that the Commission should focus secondly on NSPAC's attempts to retire its debt to the companies. NSPAC asserts that continuous efforts were made to retire the debt until "it was evident that it was a net loss proposition," and that virtually all net proceeds NSPAC received from February 1989 forward were for purposes of debt retirement, not new contributions or projects. See discussion of debt retirement efforts, *infra* at p. 18.



As the discussion regarding the terms of the underlying agreement between the companies and NSPAC will illustrate, not only is the overall nature of the RDI/NSPAC contract contrary to that of contracts usually and normally entered in the industry, the RDI/NSPAC contract is heavily weighted in the companies' favor. We stress, however, that in providing direct mail services to NSPAC, the companies provided something of value, i.e., voter contact which potentially influences federal elections regardless of the amount of money raised. Under the terms of the RDI/NSPAC contract, compensation of approximately \$1.3 million is due the companies for the rendering of those direct mail services. This is true irrespective of the existence of additional contract provisions that economically benefit the companies.

In an effort to ascertain what constitutes usual and normal business practice in the industry in which the respondent companies operate, this Office conducted informal interviews and formal depositions with two individuals who own companies that operate in the same industry.<sup>3</sup> Contrary to the companies' assertions, the witnesses testified that the overall nature of the RDI/NSPAC relationship is not usual and normal in the industry. One witness testified that there was a radical shift in usual and normal practices in the

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<sup>3</sup> The two witnesses interviewed are Ann E.W. Stone of Ann E.W. Stone and Associates, Inc., located in Alexandria, Virginia, and Roger M. Craver of Craver, Mathews, Smith & Company, located in Falls Church, Virginia. The witnesses, like the respondent companies, provide direct mail services, as well as other direct response marketing techniques, including telemarketing, to political and non-political clients. The witnesses stated that the industry in which they operate is termed the direct marketing industry. The industry's national association is called the Direct Marketing Association. Ms. Stone testified that she has reviewed direct mail contracts for at least 10-12 agencies, and has served as an expert witness in several cases in which she was required to review such contracts. Mr. Craver testified that over the years he has viewed hundreds of different direct mail contracts.

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industry during 1984-1985, and that during that period, it became other than usual and normal in the industry for a company to co-own a PAC's mailing lists during the course of the contract, which is an extremely lucrative arrangement for a company. In addition, during that time period, it became other than usual and normal in the industry for contracts to grant companies the right to exclusively carry out the client's fundraising project; non-exclusive contracts became the norm. The witness commented that "exclusive contracts are like prison sentences," and explained:

Well, if it is an exclusive contract, and it has a term of duration, and it has an extremely long termination clause, what that basically does is, it gives the client no option. They are wedded, for worse or for worse, to that agency. And they have no ability, because the agency usually, under those terms, also controls the list for the term of that contract. And in many cases, it ... co-owns [the lists].... And if they control the client's message getting out and they control the client's resource of the list, they control the client.

The witness stated that in exclusive contracts, the client's ability to terminate the contract is usually hindered in two ways - - there is a long termination period and generally all debts are due and payable upon termination. The witness stated:

And [in] a lot of the exclusive contracts, the agency has so much control that very often it's in the agency's interest and the incentive is there for the agency to abuse [the client] and to get the client into debt, because then the client can't cancel because then they have a huge debt that is owed and payable right then.

When asked why a direct mail company might want to keep a client in its control when a client is unable to pay its debt, the witness stated that many companies do it for the billings. The witness explained that if a company has billings and it's a large corporation that has a line of credit with a bank, one of the things they have to report to the bank is how much they are billing. Billings affect how a company's balance sheet looks;

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companies can get lines of credit based on the billings that are outstanding. In addition, the witness stated that some companies may believe that eventually the debt will be paid.

With regard specifically to the RDI/NSPAC contract, the witness pointed out that the contract provided for exclusive representation by RDI of NSPAC in carrying out NSPAC's fundraising program; co-ownership of the mailing lists during the term of the contract; a 5-year contract duration; a 150-day contract termination period; and the requirement that NSPAC pay RDI \$25,000 if the contract is terminated prior to the 5-year duration. The witness explained that these provisions work together to the disadvantage of the client, subjecting the client to a form of "indentured servitude." The witness also pointed out that the RDI/NSPAC contract entitled RDI to unlimited use of mailing lists during the term of the agreement, and prohibited the client from renting any list created under the contract without RDI's prior written approval. The witness explained that the provision restricting the client's ability to use its mailing lists has not been a usual and normal contract provision in the industry "since about 1975, at the latest 1978." The witness further commented that the provision makes the mailing lists the agency's property, not the client's. With respect to this provision, the other witness stated:

It's - it's unusual and, frankly, outrageous. The capacity of a client to control its own data, its own donors, is fundamental to the process of fundraising, whether it's a political committee or a charity, and the whole issue of what fundraising is and the fact that the public is involved with giving money ... comes into play here. I mean, this is highly unusual.

As a whole, this witness characterized the relationship created under the RDI/NSPAC contract as "one of jailer and prisoner" and commented that "there is no substantial freedom for the client. There is every freedom for the agency. It is quite a one-sided

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contract." Based on the foregoing testimony, we conclude that the underlying agreement between the companies and NSPAC did not conform to usual and normal practices within the industry. Again, however, we emphasize that although the underlying agreement between the companies and NSPAC ultimately worked to NSPAC's disadvantage, in providing direct mail fundraising services, the companies provided something of value to NSPAC -- voter contact that potentially influences federal elections no matter how much money is raised -- for which approximately \$1.3 million is due pursuant to the terms of the RDI/NSPAC contract.<sup>4</sup> This is not negated by the fact that NSPAC entered a contract that contained terms that were ultimately more favorable to the companies.

We now turn to the question of whether the respondent companies' continued extensions of credit to NSPAC despite NSPAC's rising debt conformed to usual and normal industry practices. With regard to the NSPAC debt, the companies explained:

In October [1988] a business decision was made to mail approximately 3 million letters on previously tested lists. The projection indicated that the mailing would net more than \$700,000. The actual results of the mailings were a loss of about \$400,000. The difference between the projected gain and the actual loss on this mailing was over one million dollars and nearly accounts for the entire debt that NSPAC has with RDI and related companies. RDI believes the variation in the projection verses actual on this particular mailing was due to the increasing point spread in the polls in the final month before the Bush-Dukakis election.

The companies further assert that they "received prompt payment from NSPAC on its invoices through October 1988" and that "the relationship between the companies and NSPAC was an arm's-length commercial transaction that was a financial success for

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<sup>4</sup> The testimony of the witnesses deposed indicates that the compensation provisions contained in the RDI/NSPAC contract were generally within the range of usual and normal charges in the industry.

these companies in spite of the currently outstanding debt." In response to the allegation in the complaint that the amount of debt owed the seven vendors is "disproportionate to the size of the vendors and to the political committees involved," the companies assert that NSPAC had receipts and expenditures of more than \$10.27 million. "NSPAC's total unpaid debt to the companies is approximately \$1.3 million, or less than 15% of gross income for the total project. NSPAC's debt to total income ratio for this project is better than the companies' average client debt to total income ratio."

Citing MUR 216/239 (1976), the respondent companies argue that courts "will not intervene in business decisions motivated by a rational purpose and made in good faith." The companies state:

Surely no business purpose is more rational than the companies' purpose in entering into a contractual relationship with NSPAC: the realization of profit. This relationship required the companies to take the risk that they would be forced to write off a large debt if NSPAC became insolvent. The Companies were willing to take that risk in return for the possibility that they would realize significant profits from the contract. That the companies' position was reasonable is borne out by the profits they ultimately did realize, profits that dramatically outweigh the loss resulting from the companies' failure to collect the NSPAC debt .... The complainant has made no showing that the companies acted with any motive other than a desire to earn a profit. The companies have earned more net income from work performed on this one NSPAC account than any other account they have handled within the same time frame.

Regarding income generated from the RDI/NSPAC contract, the respondent companies argue that as a result of the companies' co-ownership of the mailing lists created pursuant to the agreement with NSPAC, they have continued to earn "significant net dollars" and expect to do so "over the next four years." "List rental income earned from the Americans for Bush mailing list of 128,000 names and new accounts produced

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as a result of publicity over this project has more than offset all \$1.3 million owed to the companies."<sup>5</sup>

Initially, we reject the companies' argument that list rental income earned from use of NSPAC's mailing list and new accounts produced as a result of publicity "offsets" the \$1.3 million debt owed by NSPAC to the companies. Under the terms of the contract, the companies' use of NSPAC's mailing list and profits deriving therefrom were not

<sup>5</sup> Specifically, the respondent companies stated that the amount of additional revenue it realized resulting from the usage of NSPAC's Americans for Bush mailing list is as follows:

(a) AFB mailing list rental income:

1988	\$ 51,526.11
1989	273,207.63
1990	36,360.32
1991	60,303.00
1992	90,102.45
1993	<u>73,785.41</u>
Total	\$585,284.92

(b) Estimated second generational list rental: Total of 4 million names rented at 2% = 80,000 names acquired and added to second generation lists. This is a conversion rate of 66% or 2/3 of the AFB list being added to other agency client lists. Estimated additional income for the six year period would be 2/3 of the amount generated by the AFB list or \$400,000.

(c) Increase in business for all RDI companies as a result of the increase in size of all client mailing lists who have mailed the AFB list would be calculated by estimating the total number of direct mail pieces produced that would not otherwise be produced if the AFB list never existed.

Estimation: AFB list direct rentals = 4,000,000 extra direct mail pieces produced. Second generation rentals = 2,600,000 extra direct mail pieces produced. Total extra direct mail pieces produced = 6,600,000. Estimated additional revenue to RDI and related companies from the usage of the AFB mailing list is over \$2,500,000.

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linked to compensation for services rendered. The companies' right to use NSPAC's mailing list was stated in absolute form and therefore represented a source of income over and above compensation for services provided. That the use of the NSPAC mailing list represented a bargained for source of income in addition to compensation is borne out by the fact that the companies have not applied the income resulting from use of NSPAC's mailing list to NSPAC's debt. Despite the companies' claim of receiving substantial income as a result of using the NSPAC mailing list, none of this income has been applied to NSPAC's approximately \$1.3 million debt to the companies. NSPAC continues to report the debt to date. Moreover, the terms of the RDI/NSPAC contract clearly contemplate that RDI would be entitled to unlimited use of mailing lists created under the contract "without any payment of any nature whatsoever by the Agency to the client."<sup>6</sup> This language specifically negates that there would be a credit to NSPAC, or an offsetting of NSPAC's debt, based on income received by the companies from use of NSPAC's mailing list.<sup>7</sup> Consequently, evidence regarding the overall profitability of the contractual relationship is irrelevant.<sup>8</sup>

<sup>6</sup> The actual text of the RDI/NSPAC contract provision is as follows:

The Client, its officers and/or representatives shall not during the term of this Agreement, or at any time subsequent thereto, rent, exchange, donate, sell or otherwise provide any list(s) created under this Agreement to any third party for any reason whatsoever without the prior written approval of the Agency. The Agency shall be entitled to unlimited use of the same both during the term of this Agreement and at all times subsequent thereto without any payment of any nature whatsoever by the Agency to the Client.

<sup>7</sup> In addition, the expert testimony indicates that it is not usual or normal in the industry for a company that has contracted with a client on terms such as those contained in the RDI/NSPAC contract, i.e., provisions granting co-ownership of a client's mailing list

We now address the pivotal question of whether the respondent companies' continued extensions of credit to NSPAC were done in the ordinary course of business. The following chart reflects, in the "new debt" column, the extensions of credit made by the respondent companies to NSPAC from August 1988 through June 1991.<sup>9</sup> The chart also reflects the payments made by NSPAC to the respondent companies, as well as the net debt owed to the respondent companies by NSPAC during that period.

Month	New Debt	Payments	Net Debt
August 1988	\$950,830	\$429,533	\$1,445,421
September 1988	\$940,328	\$860,981	\$1,524,798
October 1-19, 1988	\$475,546	\$767,851	\$1,232,492
Oct.20-Nov.28 1988	\$229,032	\$507,470	\$ 902,016
Nov.29 - Dec.31 '88	\$ 87,522	\$ 20,729	\$ 987,115
January 1989	\$ 69,138	\$ 80,090	\$ 976,162

during the term of the contract, to offset or issue a credit against the client's debt based on the amount of income received as a result of their use of the client's mailing list. Further, the witnesses stated that issuing a credit to a client based on the remaining two categories of income claimed by the companies -- second generation rental income and an overall across the board increase in business volume, see note 5, supra, -- is not a usual and normal business practice in the industry.

<sup>8</sup> To the extent that the companies' continued emphasis on the profitability of its relationship with NSPAC may indicate that the companies wish to forgive NSPAC's approximately \$1.3 million debt, we note that the Commission has regulations governing a corporation's ability to do so. See 11 C.F.R. § 116.4 (corporation may not forgive debt of political committee for less than amount owed unless, inter alia, initial extension of credit was made in ordinary course of business).

<sup>9</sup> Although the RDI/NSPAC relationship commenced in April 1986, the analysis herein focuses only on extensions of credit occurring between August 1988 and June 1991 inasmuch as in MUR 2638 the Commission found no reason to believe that the companies had extended credit outside of the ordinary course of business for the period between April 1986 through July 1988. In addition, in light of the apparent early success of the RDI/NSPAC fundraising program, for the period at issue - August 1988 through June 1991 - we do not view NSPAC as a new committee in considering the companies' extensions of credit, but instead view it as having established a successful track record with RDI prior to that period.

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February 1989	\$ 59,590	\$ 24,000	\$1,011,758
March 1989	\$ 64,716	\$ 43,645	\$1,032,868
April 1989	\$ 19,992	\$ 10,600	\$1,042,138
May 1989	\$ 16,638	\$ 0	\$1,058,800
June 1989	\$ 36,726	\$ 2,820	\$1,092,683
July 1989	\$ 39,123	\$ 20,040	\$1,112,753
August 1989	\$ 15,883	\$ 0	\$1,128,636
September 1989	\$ 38,838	\$ 1,686	\$1,165,774
October 1989	\$ 13,756	\$ 520	\$1,174,017
November 1989	\$ 8,088	\$ 4,921	\$1,182,182
December 1989	\$ 53,388	\$ 24,058	\$1,211,512
January 1990	\$ 32,635	\$ 44,373	\$1,199,774
February 1990	\$ 37,085	\$ 21,825	\$1,215,034
March 1990	\$ 8,407	\$ 12,919	\$1,210,522
April 1990	\$ 18,831	\$ 5,000	\$1,224,353
May 1990	\$ 10,011	\$ 10,929	\$1,223,434
June 1990	\$ 21,151	\$ 9,203	\$1,235,383
July 1990	\$ 7,569	\$ 16,388	\$1,226,564
August 1990	\$ 10,792	\$ 10,518	\$1,226,841
September 1990	\$ 5,209	\$ 4,778	\$1,227,269
Oct. 1-17, '90	\$ 6,543	\$ 3,481	\$1,230,330
Oct.18-Nov.28 '90	\$ 14,574	\$ 5,938	\$1,239,276
Nov.29-Dec.31 '90	\$ 10,837	\$ 377	\$1,249,774
January 1991	\$ 4,562	\$ 5,159	\$1,249,179
February 1991	\$ 61,890	\$ 45,563	\$1,265,510
March 1991	\$ 17,670	\$ 10,400	\$1,272,777
April 1991	\$ 4,336	\$ 8,000	\$1,269,113
May 1991	\$ 1,326	\$ 1,500	\$1,268,939
June 1991	\$ 0	\$ 0	\$1,268,939

In an effort to gauge whether the respondent companies' continued extensions of credit would be considered to be a usual and normal practice in the industry, this Office asked the witnesses to consider, in a hypothetical context, the respondent companies' continued extensions of credit to NSPAC despite NSPAC's rising debt to the companies. The situation posed, which reflects the actual course of dealings between the companies and NSPAC, was as follows:

A client has a five-year contract with a direct mail company for carrying out a direct response fund-raising program. At the end of the second year of the program, the client's debt was only 13% of the client's income. At the end of the third year, the client's debt was 300% of its income. And at the end of the fourth year, the client's debt was 533% of its income.

End of 1st Year	Dec. 1987	ratio unknown
End of 2nd Year	Dec. 1988	debt = 13% of income
End of 3rd Year	Dec. 1989	debt = 300% of income
End of 4th Year	Dec. 1990	debt = 533% of income
Contract Ended	April 1991	ratio unknown

One witness' initial response to this scenario was:

That the client was not monitoring the program very well, or the agency was not providing proper information to the client, and that both the agency and the client were out of their minds to get that far out [in debt].

The other witness responded:

My initial response is, what in the world is going on here? There is no pattern here that is usual, in terms of making investment in building a donor base or building an income structure for a client. The normal process is the debt would be 500 times income in the first year, 300 times in the second year, and none or little in the third year. This is going in the reverse order, and what the reason could be, I can only speculate, but ... among the things that could be happening is that the political committee could be being used by the [company] to build a mailing list or to ... do something that, if the [company] is funding it, is a potential transfer of political money for purposes other than fundraising. There is no legitimate five-year fund-raising goal that is being met in this situation....

Regarding when the witnesses would have stopped extending credit to the client under the scenario posed, the latter witness stated that the witness' company "would have



discontinued [mailings] certainly by the end of the second year as I saw the trend going up...." The witness explained that in this situation, it will be nearly impossible to recover the debt and to provide the political committee with net income.

The witnesses' testimony establishes that the continuous extensions of credit by the companies to NSPAC are neither usual or normal in the industry nor a part of a "commercially reasonable" attempt to collect on the debts owed. Specifically, as noted previously, the witnesses stated respectively, that the companies and the committee had to be "out of their minds" to get that far out in debt, and that the witness would have discontinued mailings by the end of the second year because under the RDI/NSPAC debt scenario it would be nearly impossible to recover the debt and to provide the political committee with net income.

One witness acknowledged that the scenario would be viewed differently if the debt resulted from one large unsuccessful mailing. Although respondents identify the failure of the large-scale 1988 fundraising effort, in which approximately three million letters were mailed at once, as a primary reason for the NSPAC debt, and assert that subsequent mailings were done for the purpose of reducing the NSPAC debt, a review of records and actual mailings provided by the companies reveals that several mailings mailed subsequent to the 1988 unsuccessful mass mailing, including several done in 1990 and 1991, were not aimed at reducing the NSPAC debt.<sup>10</sup> Instead these mailings

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<sup>10</sup> The witnesses indicated that when a company does mailings solely for the purpose of debt reduction, all of the returns from the mailings would be used to reduce the client's debt, none would be given to the client for program purposes. The witnesses stated that, for ethical reasons and to avoid committing mail fraud, such mailings must convey to potential donors that debt reduction is what the money will be used for, so that the public

contained solicitations for purposes such as to lobby Congress to support the conservative agenda, to defeat or re-elect certain candidates, or to re-elect conservative candidates. In addition, the record further reflects that NSPAC made \$12,150 in direct contributions to candidates in 1989, and \$2,150 in direct contributions in 1990.

By June 1989, at the latest, it should have been very clear to both RDI and NSPAC that any efforts toward fundraising, the stated goal of the RDI/NSPAC contract, or toward reducing NSPAC's debt were not working. The extensions of credit by the companies subsequent to the 1988 unsuccessful mass mailing, with rare exceptions, consistently increased the NSPAC debt. Between December 1988 and the end of May 1989, NSPAC's debt rose from \$987,115 to \$1,058,800, an increase of \$71,685. NSPAC's payments to the companies during this five-month period totaled \$179,064, while the new debt incurred by NSPAC assertedly to reduce the debt totaled \$317,596. It should be noted that the new debt of \$36,726 reported for June 1989 followed no payments by NSPAC in May, and the new debt of \$38,838 in September 1989 followed no payments in August. Therefore, this Office concludes that, at the latest, the extensions of credit made by the respondent companies to NSPAC subsequent to May 1989, which total \$479,230, were made outside of the ordinary course of business in violation of Section 441b.<sup>11</sup>

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does not think that its donations are going toward the client's programs when the money will be used solely to reduce the client's debt.

<sup>11</sup> With respect to the complainant's assertion that the companies did not make a commercially reasonable attempt to collect the NSPAC debt, the companies argue that the Commission's regulations require the filing of suit against debtors only if it is commercially reasonable to do so. The companies state that:

## 2. RDI/RCC

In response to the complaint, RCC argues that the Commission's former regulations were in effect in November, 1989 when the RDI/RCC agreement was signed and that, therefore, the Commission's former regulations should be applied in this matter. Relying entirely upon the terms of the Commission's pre-1990 regulations, RCC asserts that the agreement was "made in the ordinary course of RDI's business and on terms which were substantially similar to other RDI agreements made with not only other political committees but non-political entities."

As discussed above, Advisory Opinion 1979-36 provided adequate notice to the regulated community that the ordinary course of business in the vendor's industry was a factor that the Commission would consider in determining the legality of extensions of credit. Therefore, we reject this argument.

RCC further argues that the RDI/RCC contract should be judged by whether it was an arms-length transaction at the time it was executed, not whether the contract resulted in a successful fundraising project. In its response, the companies similarly focus on the terms of the RDI/RCC contract. Specifically, the companies argue that the agreement between the companies and RCC was a standard pre-printed agreement and

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[p]resumably, commercial reasonableness does not require a business to expend a substantial sum of money in pursuit of a debt that may not be possible to collect .... Because NSPAC is insolvent, any attempt by the companies to collect the debt owed to them would likely be fruitless.

Inasmuch as we have concluded that most of the companies' continued extensions of credit to NSPAC, which the companies extended assertedly in an effort to reduce NSPAC's debt were violative of 2 U.S.C. § 441b on the bases that they were neither made in the ordinary course of business nor a part of a commercially reasonable attempt to collect the NSPAC debt, we need not address this argument.

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that the fee charged was the standard rate of \$50.00 per thousand packages mailed.

Further, the companies assert:

After about a year of standard direct mail prospect package testing and remailings to active donors of RCC, the Companies determined that the project did not have the potential that the Companies originally hoped. Based on the results of all work performed by the Companies for RCC, the Companies made a business decision to temporarily reduce the level of mail volume until the political fundraising climate improved.

In the foregoing arguments, the respondents appear to focus only on the underlying agreement between the companies and RCC. However, in determining the legality of extensions of credit, it is necessary to examine whether the companies' continuous extensions of credit under the circumstances surrounding the RDI/RCC relationship conformed to usual and normal industry practices.

The witnesses testified that it is a usual and normal practice in the industry for companies to extend credit to political action committees (PACs) because there is an expectation that PACs will be around for a long period of time. Relevant to how PACs are viewed in the industry from a creditor's standpoint, one witness stated:

... [P]rovided it's a longstanding political committee ..., the political committee has a more institutional dimension, so that ... if it hits some rough water in one year, chances are it will recover and be a good -- a good paying client in another year, so that suppliers and agencies both tend to take a long view of political committees ...

However, the witnesses' indicated that the foregoing practice of extending credit applies provided that the PAC is a longstanding organization with a reputation of credit worthiness and that the normal view of extensions of credit is very different with respect to new political committees. Specifically, one witness testified that since around 1985 or 1986, it has become "more usual" in the industry for companies to require new political

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committees to raise seed money that could be escrowed and used to cover any potential losses in early mailings or, alternatively, to "keep a very tight rein on [ ] how the money is spent." Relevant to usual practices involving extensions of credit to new versus established, longstanding committees, the other witness testified that the principal factors relied upon in considering whether to extend credit to a client include the reputation of the people involved and, inter alia, whether the company has worked with the individuals before and whether any prior experience with the individuals was positive. The witness also stated that the amount of credit that is going to be extended is an important consideration, stating "[i]t's one thing to extend credit of a limited nature. It's quite another to expose suppliers to enormous risk."

We now address the question of whether the respondent companies' continued extensions of credit to RCC conformed to usual and normal industry practices. The following chart reflects, in the "new debt" column, the extensions of credit made by the respondent companies to RCC from February 1990 through June 1992. The chart also reflects the payments made by RCC to the respondent companies, as well as the net debt owed to the respondent companies by RCC during that period.

Month	New Debt	Payments	Net Debt
February 1990	\$18,606	\$ -0-	\$ 18,606
March 1990	\$ 4,903	\$16,098	\$ 6,930
April 1990	\$48,797	\$ 3,984	\$ 51,743
May 1990	\$23,324	\$12,912	\$ 62,156
June 1990	\$ 4,859	\$15,468	\$ 51,546
July 1990	\$71,695	\$ 9,612	\$113,629
August 1990	\$67,542	\$57,756	\$123,415
September 1990	\$27,479	\$48,287	\$102,606
October 1990	\$14,683	\$14,414	\$102,875
November 26, 1990	\$ 1,632	\$26,673	\$ 77,834
11/27 - 12/31, 1990	\$27,603	\$12,755	\$ 92,682

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January 1991	\$15,929	\$18,214	\$ 90,397
February 1991	\$18,312	\$21,655	\$ 87,054
March 1991	\$ 9,297	\$10,274	\$ 86,077
April 1991	\$ 5,724	\$10,314	\$ 81,487
May 1991	\$ 3,718	\$ -0-	\$ 85,206
June 1991	\$ 9,575	\$ 6,266	\$ 88,516
July 1991	\$13,626	\$16,105	\$ 84,327
August 1991	\$12,434	\$ 8,504	\$ 89,966
September 1991	\$ 8,523	\$ 9,189	\$ 89,300
October 1991	\$ 3,292	\$ 1,215	\$ 91,377
November 1991	\$ 85	\$ -0-	\$ 91,463
December 1991	\$ 485	\$ -0-	\$ 91,949
January 1992	\$ 1,058	\$ -0-	\$ 93,000
February 1992	\$ 824	\$ -0-	\$ 93,824
March 1992	\$ 1,385	\$ -0-	\$ 94,209
April 1992	\$ -0-	\$ -0-	\$ 94,209
May 1992	\$ 818	\$ -0-	\$ 95,027
June 1992	\$ -0-	\$ -0-	\$ 95,027

In its response to the complaint, RCC explains that it was formed to support non-incumbent Republican candidates for the U.S. Senate and House of Representatives, and that although RCC believed that this message "would be very attractive to potential Republican contributors, it was seen as a failure after several months. The revenues were not generated to cover expenses and little if any funds were used for purposes other than direct mail costs."

The record reflects that prior to entering the RDI/RCC contract, the companies had business dealings with the chairman of the RCC, Mr. Floyd Brown, during the time that Mr. Brown was associated with NSPAC. At the time that the parties entered the RDI/RCC contract, NSPAC was deeply in debt to the companies as a result of fundraising activities spearheaded by Mr. Brown. The difference in the focuses of the RCC fundraising program and the earlier NSPAC fundraising program (RCC was created

to assist congressional campaigns of Republican candidates in 1990 whereas NSPAC's activities were aimed at assisting the presidential campaign of George Bush in 1988 and, to a lesser extent, to support seven Senate candidates in the same election cycle) may have provided a basis for early optimism and led the companies to undertake the RCC fundraising program. However, the companies' past dealings with Mr. Brown, as well as RCC's newly formed status should have caused the companies to make only very narrow extensions of credit to RCC, if extensions of credit were made at all.

Specifically, the record reflects that Floyd G. Brown, the chairman of RCC, was previously active as a consultant to NSPAC, and in that capacity, headed NSPAC's 1988 Americans for Bush (AFB) fundraising effort. In November, 1989, when RCC contracted with the companies for the provision of the direct response fundraising services at issue, NSPAC was carrying over \$1,000,000 in debt to the companies stemming from the fundraising activities in which Mr. Brown was involved. Based on the expert testimony, we conclude that usual and normal industry practices under such circumstances would entail requiring RCC to raise seed money to cover any potential early losses or, at the very least, very narrowly limiting extensions of credit to RCC.

Moreover, notwithstanding past dealings with individuals involved with RCC, the expert testimony indicates that the usual and normal industry practice regarding extending credit to new political committees, like the then newly formed RCC, would be to make very limited extensions of credit. As can be seen on the monthly summary of RCC debt, the amount of new debt owed the companies by RCC jumped several fold in July and August, 1990, with net debt owed more than doubling by the end of July, having

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increased from \$51,546 to \$113,629. While the witnesses' testimony indicates that extending more credit to reduce a client's debt is normal industry practice, the \$71,695 and \$67,542 credit extensions in July and August are disproportionately large considering the newly formed status of the committee and the already existing \$51,546 debt.

Therefore, we conclude that the extensions of credit made by the companies to RCC subsequent to June 1990, which total \$315,719, were made outside of the ordinary course of business in violation of 2 U.S.C. § 441b.<sup>12</sup>

### III. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe that Response Dynamics, Inc., and its associated companies, Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-American Printing Company, and Fulfillment Management Services, Inc. violated 2 U.S.C. § 441b.

Date

2/2/96

  
Lawrence M. Noble  
General Counsel

<sup>12</sup> RCC further argues that it had no control over whether the companies took sufficient steps to collect the debts and further stated that "the issue of the size of the debt and the attempts by RDI to collect it are irrelevant to the issues involving RCC." Inasmuch as we have concluded that most of the companies' continued extensions of credit to RCC were violative of 2 U.S.C. § 441b on the basis that they were not a part of usual and normal industry practices, we need not address this argument.

**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
FAX (202) 861-1783 • TELEX 2357276  
WRITER'S DIRECT DIAL NUMBER  
(202) 861-1504

August 8, 1996

General Counsel Office  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463  
Attn: Tracy L. Ligon

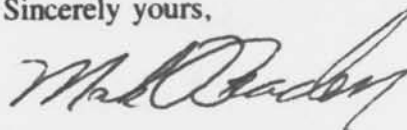
Re: MUR 3638 - Response Dynamics, Inc.

Dear Ms. Ligon:

I am writing in response to your letter notifying our client that it was the intention of the General Counsel's office to recommend to the Commission that it find probable cause to believe that a violation has occurred in MUR 3638. As indicated to you in our telephone discussion, a response brief which could adequately address the issues raised in the General Counsel's brief cannot be prepared within 15 days. The General Counsel's use of novel arguments, combined with the appearance of outside witnesses will require additional time for a response brief to be prepared. Also the response period comes at the time of the Republican National Convention in San Diego.

For the above reasons, I am requested that the General Counsel's Office grant an extension of 20 days for the filing of a response brief in MUR 3638 by Response Dynamics, Inc., et al.

Sincerely yours,



E. Mark Braden

EMB/rvn

cc: Response Dynamics, Inc.

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 13, 1996

E. Mark Braden  
Baker & Hostetler  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304

RE: MUR 3638  
Response Dynamics, Inc.

Dear Mr. Braden:

This is in response to your letter dated August 8, 1996, which we received on August 12, 1996, requesting an extension of 20 days to respond to the brief of the General Counsel. 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 September 11, 1996.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey L. Ligon", followed by a horizontal line.

Tracey L. Ligon  
Attorney

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

9604371656



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

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

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OFFICE OF GENERAL  
COUNSEL

August 15, 1996

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

attn: Tracey L. Ligon, Esq.

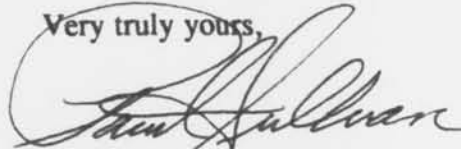
RE: MUR 3638, National Security Political Action  
Committee and Elizabeth I. Fediay, as Treasurer

Dear Mr. Noble:

On August 5, 1996, I received the counsel's brief in the above-referenced matter which recommends a probable cause finding for a 2 U.S.C. §441b violation. I have forwarded the documents to my client, and we are in the process of drafting a response. I have just returned, this date, from a one week vacation, and as a result, I would request a twenty (20) day extension of time in which to file a response brief on behalf of the above-referenced client. Specifically, the response brief will be filed no later than Monday, September 9, 1996. In addition to the time delay resulting from my vacation, given the three years of financial activities pertaining to the Committee's debt, the additional time requested will be necessary to review those debt schedules.

Thank you for your time and attention to this matter. Should you have any questions, please contact me at your earliest opportunity.

Very truly yours,



Paul E. Sullivan, Esq.

cc: Elizabeth Fediay

9604371657

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

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

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COUNSEL

August 15, 1996

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

attn: Tracey L. Ligon, Esq.

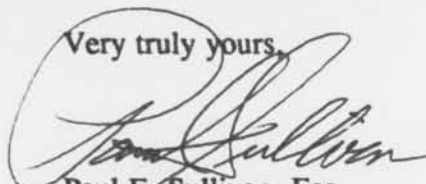
RE: MUR 3638, Republican Challengers Committee  
And Robert E. Miller, Jr., as Treasurer

Dear Mr. Noble:

On August 5, 1996, I received the counsel's brief in the above-referenced matter which recommends a probable cause finding for a 2 U.S.C. §441b violation. I have forwarded the documents to my client, however, I understand that the Chairman is at the San Diego Convention and I have yet to receive a response from him.

Based upon that fact, I would hereby request an additional twenty (20) to file a response brief in the above-referenced matter. Specifically, the response brief will be filed no later than Monday, September 9, 1996. Please notify me should you have any questions pertaining to this request.

Very truly yours,



Paul E. Sullivan, Esq.

cc: Floyd Brown

9604371658



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 16, 1996

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Suite 500  
Washington, DC 20005

RE: MUR 3638  
National Security Political Action Committee  
and Elizabeth I. Fediay, as Treasurer

Dear Mr. Sullivan:

This is in response to your letter dated August 15, 1996, requesting an extension of 20 days to respond to the brief of the General Counsel. 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 September 9, 1996.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Tracey L. Ligon", followed by a horizontal line.

Tracey L. Ligon  
Attorney

9604371659



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 16, 1996

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Suite 500  
Washington, DC 20005

RE: MUR 3638  
Republican Challengers Committee  
and Robert E. Miller, Jr., as Treasurer

Dear Mr. Sullivan:

This is in response to your letter dated August 15, 1996, requesting an extension of 20 days to respond to the brief of the General Counsel. 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 September 9, 1996.

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

Sincerely,

Tracey L. Ligon  
Attorney

960437166C

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

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

The Singletary Madison  
1565 The Alameda  
San Jose, CA 95126

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August 27, 1996

Lawrence M. Noble, Esq.  
General Counsel  
Attention: Tracey L. Ligon, Esq.  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463  
via messenger

Re: MUR 3638 Republican Challengers' Committee and Robert  
E. Miller, Jr., as Treasurer

Dear Ms. Ligon:

First, thank you for your letter of August 16, 1996 granting my request for an extension until September 9, 1996 in which to file a response to General Counsel's probable cause brief in the above-referenced matter.

Pursuant to filing that response, I am hereby requesting that the Commission provide to me a full and complete copy of the two depositions referenced in the General Counsel's brief at page seven. Specifically, the depositions of Ann E.W. Stone of Ann E.W. Stone and Associates, Inc., Alexandria, Virginia, and Roger M. Craver of Craver, Matthews, Smith and Company, Falls Church, Virginia.

In presenting its arguments, the Counsel has relied substantially upon the expert witness of the two above-referenced individuals to ascertain evidence as to what constitutes usual and normal business practices in the direct mail industry. (See pages seven and eight of Counsel's probable cause brief.) Counsel's brief relies strongly upon the "normal industry practice" in its interpretation of the regulations and the Advisory Opinion cited in the brief, AO 1979-36.

In light of the fact that Counsel has proffered such "expert" testimony, respondents require an opportunity to fully examine the context in which questions cited and relied upon in Counsel's brief were posed and whether or not there were qualifications to the expert's testimony. It is not

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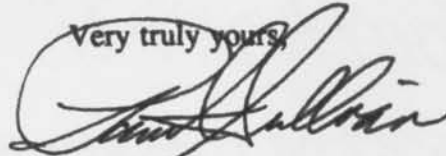


Lawrence M. Noble c/o Tracey L. Ligon /p.2  
August 27, 1996

possible to properly respond to the arguments of Counsel's brief without having access to this expert testimony.

For those reasons, I respectfully request that a copy of the two aforementioned depositions be provided to me no later than Tuesday, September 3, 1996. Thank you for your time and attention to this matter, and I look forward to your earliest response.

Very truly yours,



Paul E. Sullivan, Esq.

cc: Chairman Elliott  
Vice Chairman McGarry  
Commissioner Akins  
Commissioner McDonald  
Commissioner Thomas

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&  
HOSTETLER**  
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
FAX (202) 861-1783 • TELEX 2357276  
WRITER'S DIRECT DIAL NUMBER

(202) 861-1674

August 27, 1996

**VIA HAND DELIVERY**

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

Attention: Tracey L. Ligon

Re: MUR 3638 - Response Dynamics, Inc., et al.

Dear Mr. Noble:

This letter is written in response to the General Counsel's Brief recommending that the Commission find probable cause to believe that a violation has occurred in the above-referenced matter.

Upon review of that brief, it is clear that the General Counsel's position rests almost entirely on the deposition testimony of two expert witnesses, Anne E. W. Stone and Roger M. Craver. The General Counsel quotes extensively from the deposition testimony of these two witnesses. However, a full transcript of the testimony has not been provided to respondents.

In order to effectively respond to the General Counsel's brief, we believe that respondents should have access to the entire transcript of the deposition testimony of each expert witness. It is difficult to draft a response to testimony that has not been reviewed, except in the small extracts chosen by the General Counsel for inclusion in the brief.

In light of the short time frame for filing a brief in response to the General Counsel's position, we request that you provide copies of the deposition transcripts as soon as possible.

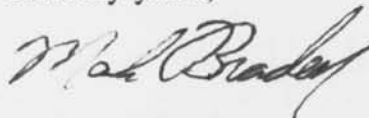
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OFFICE OF GENERAL  
COUNSEL

Lawrence M. Noble  
August 27, 1996  
Page 2

In order to expedite receipt of the transcripts and for your convenience, we will be happy to send a messenger to pick up the transcripts from the Commission.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely yours,



E. Mark Braden

EMB/rvn

9604371664



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 29, 1996

Paul E. Sullivan, Esquire  
1225 I Street, NW  
Suite 500  
Washington, DC 20005

RE: MUR 3638  
National Security Political Action Committee  
and Elizabeth I. Fediay, as Treasurer

Dear Mr. Sullivan:

Pursuant to your request of August 27, 1996, this Office has enclosed a copy of the deposition transcripts of Ms. Anne E.W. Stone and Mr. Roger M. Craver, the expert witnesses whose testimony is relied upon in the General Counsel's Brief in the above-referenced matter.

We remind you, however, that since this deposition testimony has been obtained as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the persons with respect to whom the investigation is made. No such consent has been given in this case.

If I can be of any further assistance, please contact me at (202) 219-3690.

Sincerely,

Tracey L. Ligon  
Attorney

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

9604371645



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 29, 1996

E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, Suite 1100  
Washington, DC 20036

RE: MUR 3638  
Response Dynamics, Inc., et al.

Dear Mr. Braden:

Pursuant to your request of August 27, 1996, this Office has enclosed a copy of the deposition transcripts of Ms. Anne E.W. Stone and Mr. Roger M. Craver, the expert witnesses whose testimony is relied upon in the General Counsel's Brief in the above-referenced matter.

We remind you, however, that since this deposition testimony has been obtained as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the persons with respect to whom the investigation is made. No such consent has been given in this case.

If I can be of any further assistance, please contact me at (202) 219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey L. Ligon", is written over a horizontal line.

Tracey L. Ligon  
Attorney

96043771666





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 6, 1996

Ms. Ann Stone  
Ann E.W. Stone & Associates  
Suite 200  
2900 Eisenhower Avenue  
Alexandria, VA 22314

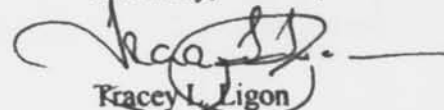
RE: MUR 3638

Dear Ms. Stone:

As you requested during our telephone conversation this evening, I have enclosed a copy of the transcript of your December 13, 1995 deposition testimony which was taken in connection with the above-referenced matter. In light of the confidentiality provisions of 2 U.S.C. Section 437g(a)(12)(A), which have not been waived by the respondents in this matter, this Office is unable to provide you with a copy of the testimony of any other witness.

Should you have any questions, please contact me on (202) 219-3690.

Sincerely,

  
Tracey L. Ligon  
Attorney

9604371667

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

The Singletary Mansion  
1565 The Alameda  
San Jose, CA 95126

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COUNSEL

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September 10, 1996

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

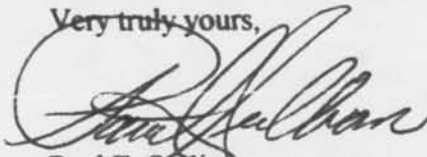
ATT: Tracy L. Ligon, Esq.

re: MUR 3638  
National Security PAC

Dear Ms. Ligon:

Enclosed please find NSPAC's Probable Cause Brief for the above-referenced matter.

Very truly yours,



Paul E. Sullivan  
Counsel for Respondent

cc: E.I. Fediay  
Chairman Elliott  
Vice-Chairman McGarry  
Commissioner Aikens  
Commissioner McDonald  
Commissioner Thomas

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MUR 3638

## RESPONSE TO GENERAL COUNSEL'S PROBABLE CAUSE BRIEF

This matter was generated by a complaint filed with the Federal Election Commission ("FEC" or "Commission") by the Democratic National Committee. By a letter dated October 8, 1992, the Commission provided National Security Political Action Committee ("NSPAC") with a copy of the complaint. On December 1, 1992, NSPAC filed its RTB Response Brief with the Commission. By a letter dated October 3, 1994, the Commission issued a subpoena for production of documents and answers to interrogatories propounded pertaining to this matter. Documents were filed with the Commission by letter dated December 5, 1994. By a letter dated August 2, 1996, NSPAC received the General Counsel's probable cause brief and this document is filed as a response to that brief in accordance with 2 U.S.C. §437g(a)(3).

In essence, the General Counsel is making a recommendation that the Commission find probable cause that NSPAC received an improper extension of credit amounting to four hundred seventy-nine thousand, two hundred thirty dollars ( \$479,230.00) in violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act.") The genesis for this accusation was an April 1986 direct mail contract which NSPAC entered into with Response Dynamics, Inc. ("RDI") and a host of its vertically-integrated subsidiaries providing support service for RDI's direct mail business.

From the time that the April 1986 contract was signed up to May of 1991, NSPAC raised a total of approximately ten million, two hundred thousand dollars (\$10,200,000.00) through its direct mail contract with RDI. The direct mail fundraising ceased after June of 1991, at which time, NSPAC had an outstanding debt of one million, two hundred sixty-eight thousand, nine hundred and thirty-nine dollars (\$1,268, 939.00.) That debt continues to be outstanding as of this date.

The theory proffered by the General Counsel's office is that, "... the extensions of credit made by the Respondent companies to NSPAC subsequent to May 1989, which totals four hundred seventy-nine thousand, two hundred thirty dollars (\$479,230.00) were made outside the ordinary course of business in violation of §441b." (Footnote omitted.)<sup>1</sup>

After an investigation which has lasted nearly four (4) years, including responses to interrogatories and production of thousands of documents and the testimony of "expert witnesses," the General Counsel offers the Commission very little evidence upon which to base a probable cause finding. The elementary findings of fact which are central to support its allegations of specific violations of the Act are presented in a conclusionary fashion with little cross-reference to any of the materials presented during discovery.

The OGC Brief narrows its case down to the issue of whether or not the extension of credit<sup>2</sup> by RDI constituted usual and normal business practices in the industry in which the RDI companies operate. The OGC Brief indicates that, in an effort to ascertain what constitutes usual and normal

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<sup>1</sup> General Counsel's Probable Cause Brief ("OGC Brief"), page 19.

<sup>2</sup> OGC Brief acknowledges that no improper credit was extended by NSPAC by virtue of entering into a contract with RDI from April 1986 through July 1988; rather, they argue the improper extension of credit occurred from August 1988 (a date rather arbitrarily selected) through June 1991.

business practices, they conducted informal interviews and formal depositions with two individuals in the direct response industry<sup>3</sup>. The mere fact that the Counsel's office was compelled to seek expert testimony to provide a standard against which to measure the words of the regulations and the single advisory opinion (Advisory Opinion 1979-36) to which it cites, evidences that it is a rather vague legal standard, not easily understood even by the Counsel. Yet the Commission is being asked to find that the members of the regulated were somehow expected to have a greater insight to that standard than did the Counsel's office.

The Respondents will demonstrate below that the contract entered into in 1986 with RDI met the statutory and regulatory standards of the time, (a point not disputed in the OGC Brief) and the ongoing extension of credit continually met those regulatory standards. Second, the expert witnesses to whom the OGC Brief so heavily relies consisted of (1) a witness who was admittedly prejudiced against RDI, (2) witnesses who offered different opinions on material issues pertaining to what constitutes the usual and normal business practice in the industry thereby substantiating that those standards are extremely broad, and thus ones which include the RDI contract provisions in question, and (3) the General Counsel's office completely misled the expert witnesses by alleging that the amount of debt in 1989 and 1990 rose to three hundred percent (300%) and five hundred and thirty-three percent (533%) of NSPAC's income for those respective years. Respondents will proffer their

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<sup>3</sup>

OGC Brief, page 8. Respondents have been provided with copies of the transcripts of the deposition of Ann Stone and Roger M. Craver, which are referenced in the OGC Brief. Respondents were not notified regarding with whom the "informal interviews" were conducted. I do note for the Commission's consideration that it is rather odd that such expert witnesses would be deposed and yet the two principals of RDI were not deposed to enable them to respond to the testimony pertaining to what they considered to be the "industry standard" for the "usual and normal business practices in the industry." It would seem that that is the only true fashion in which the Commission would have received an accurate basis for comparison between the expert witnesses and the basis upon which RDI drafted its contract in 1986.



own chart to demonstrate the amount of debt from July 1988 through May of 1991 increased by a mere twelve and one-half percent (12.5%.)

The General Counsel has the burden to offer to the Commission clear and credible evidence, especially in a case of this magnitude, upon which to make a finding of probable cause. Due to the fact that Counsel has failed substantially in its legal analysis and in its evidentiary production to substantiate that extensions of credit did meet the regulatory and industry standards, Respondents request that the Commission make a finding of no probable cause and close the file in this matter.

#### Analysis and Legal Arguments

1. The contract which NSPAC entered into in April 1986 complied with the regulatory requirements of the FECA and the formal advice provided by the FEC which was available at the time the contract was executed.

The OGC Brief questions and in fact rejects a statement made in the NSPAC RTB Brief, that the applicable regulations for review of the 1986 contract should be the regulations which were in effect at that time; not those enacted in 1990. Respondents cited to those regulations as a factual matter and one of basic legal construction; at the time the RDI contract was entered into, the regulations which were in effect must govern the determination as to whether or not that contract was in compliance with those regulations. Counsel disputes this basic tenet and rather cavalierly states,

*"... the regulated community was provided with adequate notice that the ordinary course of business in the vendor's industry was a factor that the Commission would consider in determining the legality of extension of credit. Specifically, in Advisory Opinion 1979-36, which was issued on July 27, 1979, the Commission addressed precisely the type of extension of credit involved in this matter and conditioned its approval of the proposed arrangement upon, inter alia, the arrangement's conformance to "normal industry practice." Therefore,*

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*we reject NSPAC's implied argument that conformance to the Corporation's own business practice is the controlling inquiry in determining the legality of extensions of credit, and herein we apply, inter alia, the "normal industry practice" standard with respect to all of the activity at issue, which occurred between August 1988 and June 1991.*"<sup>4</sup> (Emphasis added.)

Respondent was not making an "implied argument"; it was not an argument at all, but rather a direct quotation of the applicable regulations. The plain language of the regulations is the standard to which the Commission must be held when adjudicating compliance matters<sup>5</sup>. There is no need to look behind the language of the regulations for some new and subtle interpretation when the regulations are clear from a plain reading of the words<sup>6</sup>. Respondent does not dispute the language of the Advisory Opinion cited above. However, to state that the "normal industry practice" standard is the one that the Commission intends to apply in this case is *factually* not a standard captured in the plain language of the regulations. To summarily dismiss, as OGC's Brief attempts to do, the 1987 regulation is flat wrong. Second, if, as Counsel contends, there is no substantive distinction between the 1987 and 1990 regulations, they should comply with accepted rules of construction and cite to the 1987 provisions, not the "three-prong" approach found in the 1990 amended regulations at 11 C.F.R. §116.3.

The distinction is a material and significant one. The 1987 regulations state that a corporation may extend credit, "...provided that the credit is extended in the ordinary course of the *corporation's*

<sup>4</sup> OGC Brief, page 5-6.

<sup>5</sup> US v. Winstar Corp., 116 S. Ct. 2432 (1996)

<sup>6</sup> Gardebring v. Jenkins, 485 U.S. 415 (1988); Commissioner of Internal Revenue v. Schleier, 115 S. Ct. 2159 (1995)

*business* and the terms are substantially similar to the extensions of credit to non-political debtors which are of similar risk and size of obligation." (Emphasis added.)<sup>7</sup>

In fact, in AO 1979-36<sup>8</sup> the Commission merely recited the two-prong standard from the regulations in effect up to 1990.

"The Commission concludes that if, in fact, (1) the proposed financial agreement with its provisions for expenses to be initially incurred by Working Names, and for limited liability on behalf of the Committee if the direct mail is "unsuccessful," is of a type which is normal industry practice and contains the type of credit which is extended in the ordinary course of Working Names business with terms which are substantially similar to those given to non-political, as well as political, debtors of similar risk and size of obligation, and if (2) the cost charged the Committee are at least the normal charge for services of that type, then the amounts expended by Working Names will not be considered to be campaign contributions." (Emphasis added.)

Whereas the language of the 1987 regulations looks solely to the ordinary course of the corporation's business which is extending the credit, the reference made to "normal industry practice" adds an additional criteria beyond the parameters of the regulation. It directs one to look beyond the corporation extending the credit and instead requires the credit terms to be assessed based on the entire "industry."

Counsel also contends that this additional and much broader standard of review be applied in this case based upon a rather subtle reference contained in a 1979 Advisory Opinion. Counsel points to no provision in the statutes, the regulations in place at that time, no citation to the regulation's explanation and justification, policy positions of the Commission, or even a second

<sup>7</sup> 11 C.F.R. §114.10(a), (1987.)

<sup>8</sup> Fed. Elec. Camp. Fin. Guide, (CCH) ¶5421.

Advisory Opinion to which this new standard is also included. Despite that, the Counsel argues that, by virtue of that one phrase, "...the regulated community was provided adequate notice" of the Commission's intent to employ this new criteria<sup>9</sup>.

Counsel does not dispute this new criteria was not in the 1987 regulations. This new standard to which the Counsel claims will be the "standard with respect to all the activity at issue" in this MUR, first surfaced in the newly-created section 116 of the regulations which became effective in 1990. The three-prong provision found in the amended 1990 regulations which the Commission considers in determining whether credit is extended in the ordinary course of business, sets forth the first two criteria focusing solely on the vendor's policy for credit extensions. Specifically, whether the vendor followed *its* established procedures and *its* past practices in approving the extension of credit, and (2) whether the *vendor* received prompt payments in full if it previously extended credit to the same candidate or political committee. These first two elements reflect the entire standard of the 1987 regulations. The third prong of the 1990 revised regulations was not set forth in the 1987 regulations; it requires one to also look beyond the internal normal course of business of the vendor and focuses on the "usual and normal practice in the vendor's trade or industry." The Advisory Opinion process is in the Act merely to enable the Commission to apply the operative terms of the Act and *regulations* to a given fact pattern. It is not a vehicle to amend or expand the standards plainly set forth in the regulations<sup>10</sup>.

The distinction between the 1987 and the 1990 regulatory standards is not one which the Commission should lightly brush aside nor cavalierly impose upon Respondent's actions in this

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<sup>9</sup> OGC Brief, page 5.

<sup>10</sup> See 2 U.S.C. §437f.

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matter. OGC's Brief does not even attempt to argue that the RDI contract, and thereby the extension of credit, was in violation of either of the first two prongs. Rather, it skips immediately to a discussion of the third prong of the Commission's regulations<sup>11</sup>. If the Commission determines that the standard articulated in the third prong was not an enforceable provision at the time of the April 1986 contract or up through October 27, 1990, then the entire case presented by the OGC must fail. As is shown below, the expert testimony, and the exclusive theory presented to the Commission by the Counsel is that the ongoing extension of credit by RDI failed to meet the "normal industry practice" -- the third prong of the 1990 regulations in question.

It is clear that RDI complied with the 1987 regulations and in fact, with §116.3 of the revised credit regulations. Specifically, RDI followed its established procedures and past practices in approving the extension of credit. This is evidenced by the fact that RDI tendered and NSPAC executed the standard vendor/client contract<sup>12</sup>. As to the second prong, which would require that RDI received prompt payment in full for previously extended credit to the same political committee, i.e., NSPAC, is not applicable since there is no evidence proffered by Counsel that RDI had a prior contract with NSPAC nor Elizabeth Fediay, the treasurer.

For the reasons stated above, it is the position of Respondent that it fully and accurately complied with the applicable regulations pertaining to the extension of credit.

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<sup>11</sup> OGC Brief, page 7. Also, the very reference here to the third prong of the Commission's regulations indicates that the Counsel's office is not relying upon the verbiage of the 1987 regulations but rather insists on applying the regulatory standards of §116.3 enacted June 27, 1990, and effective October 3, 1990.

<sup>12</sup> See OGC Brief, Page 2.



2. The expert witnesses, which OGC cites as the cornerstone of its case, must be disregarded because of the gross prejudice by one witness toward RDI and the testimony of the two witnesses is sufficiently different on material issues so as to evidence that there is no consensus regarding "usual industry standards."

Respondents are uncertain as to how the Counsel's office came to select the two expert witnesses so heavily relied upon in the OGC Brief. However, the testimony of Ann E. W. Stone ("Stone") should be summarily disregarded by the Commission and should have been disregarded by the Counsel in preparation of his brief to the Commission.

First, Counsel's office failed to qualify either witness as to their objectivity in this matter. At that point in Ms. Stone's deposition when she indicated that she knew of RDI, Counsel should have explored the basis for the knowledge and whether there was any prejudice on behalf of the witness toward RDI based upon past activities, potential conflicts amongst clients, litigation, etc. Such qualification was not made at any time by Counsel during the deposition. Failure to explore this potential prejudice became material to the testimony of the witness when Stone testified that she would not join a professional association, specifically Direct Response Fund-Raising Council, merely because that association permitted RDI to be a member. (Stone Deposition, page 140-1.) The fact that an individual such as Ms. Stone who is a recognized leader in the area of direct response by her own admission and by the Counsel by virtue of selecting her as an expert witness, would refuse to join a leading direct response association merely because that association permitted to RDI to be a member is such a blatant indication of prejudice toward RDI that Ms. Stone's testimony pertaining to RDI's compliance with any ethical, let alone "industry standard procedures" must be completely rejected by the Commission. For the Counsel to even submit such testimony to the Commission as evidence of an objective expert witness must be severely questioned by the Commission.

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In addition, this apparently is not the first time that Ms. Stone had reviewed or been privy to the terms of an RDI client contract. In response to Counsel's question during the deposition, pertaining to the liquidated damages clause in the RDI Contract, specifically, the payment of twenty-five thousand dollars (\$25,000.00) in the event of a premature termination, Ms. Stone stated: "I have seen this in *their* contracts before and only in *their* contracts." (Stone Dep.: page 126, line 8.) Counsel failed to inquire of the witness as to how she came to previously review such contracts, the contents in which those reviews were undertaken, and how often she encountered or had the opportunity to review RDI contracts. This is especially material in view of Ms. Stone's earlier testimony that she consider herself the "agency doctor" whereby clients who were "broken" by their former direct mail firm came to her for "healing" (Stone Dep.: page 16-17.) One must ask how much of her client base consists of former RDI clients? The failure by Counsel to pursue the potential prejudice and thereby qualify the witness as an expert, able to render an objective opinion, mandates that the Commission not put any credence in the opinions expressed by Ms. Stone. These are matters which clearly would have surfaced had Respondent had the opportunity to cross-examine the expert witness. Respondent has little doubt that Ms. Stone's credibility to express an objective opinion pertaining to RDI would have been completely impeached, were such cross-examination permitted.

3. The two expert witnesses express completely different opinions pertaining to substantial and material industry activities so as to demonstrate Respondents' very point that the industry standards are extremely broad and the RDI contract fits within those industry standard parameters.

Notwithstanding the apparent prejudice of Ms. Stone, a review of the depositions of Ms. Stone and Mr. Craver does demonstrate one point which Counsel's brief fails to acknowledge; the witnesses express diametrically opposing views on material issues pertaining to the "industry standard" as they relate to the RDI contract. Several of these major discrepancies are detailed below.

(A) Contract Termination and Duration: Stone testifies that her contracts are generally open-ended, whereas Craver testifies his contracts are for a specific time period. In addition, Stone testifies thirty to sixty days, perhaps ninety, is the usual termination timeframe, whereas Craver testifies it is usually one hundred twenty days and maybe up to one year.

Stone Testimony:

Q: Okay. What factors does your company normally consider in determining the duration of a contract?

A: Our contracts generally are open-ended. They do not have a duration, but they have the ability to cancel on us very quickly.

Some contracts are 30-day cancellation. Some are 60. The most I think we have are 90, and that's unusual . . . . I think 90 usually, or even back to 30 or 60, because I believe the client should always have the right to walk away from us. (Stone Dep.: pages 43-44.)

Compare to the testimony of Mr. Craver:

Q: So, usually direct mail contracts include some provision for the duration of the contract, and usually what is --

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A: Usually it's a fixed term. It may be the entire term of a campaign, a two-year term or an eighteen month term...

Q: And is that the same with respect to political committees?

A: Generally.

Q: Okay.

And you're saying that the short 60-day termination period --

A: Is unusual.

Q: Is unusual? What is usual?

A: What is usual is 120 days, 90 days. Sometimes it goes for a year with written notice. Otherwise it extends automatically for another term.

Q: Okay. (Craver Dep: pp. 29-30)

(B) Co-Ownership of List: Ms. Stone contends it is not usual to co-own a list, whereas Mr. Craver disagrees.

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Q: You mentioned that your company doesn't co-own mailing lists.

A: Right.

Q: Is it a (sic) usual and normal practice in the industry for direct mail companies to co-own mailing lists?

A: I'm proud to say that I think our -- our agency led the way in making it less usual.

And, in fact, today it has now become more usual, because clients have become more educated and generally do not allow co-ownership.

Q: Okay. And when would you say that it --

A: Again, about the last ten years. There, again, are some clients that are willing to give that up. And sometimes it is a trade-off for other things the agency can do.

But clients have come to understand their list is usually their greatest asset, and it can be abused if they allow co-ownership.

Q: Okay.

A: And most of those agencies in town that are considered the best don't co-own. (Stone Dep: pp. 66-67)

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Contrast that with Mr. Craver, who testified as follows:

A: ... In political fundraising there are a variety of agreements on the ownership of data and names. Most agreements provide for shared ownership. Some provide for ownership by the contractor. The -- the protection of data and the -- and its use solely by the client is more rare than common in the political direct mail business.

Q: Okay.

So co-ownership, then, of the mailing list by the agency and the client is not usual in a direct mail industry?

A: No. The co-ownership is -- is -- is not unusual -- I don't know whether it's usual. It's not unusual.

Q: Okay. (Craver Dep: page 26)

(C) Use of Co-Ownership Fees to reduce client's outstanding debt: Ms. Stone testifies income from list is not applied to client's outstanding debt. However, Mr. Craver testifies that such proceeds are routinely used for reducing client's debt.

Q: Okay. Now, what would your company do in the instance when the -- okay. Well, I'm sorry. In an effort to reduce the debt of a client --

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A: Mm-hmm.

Q: -- Has your company ever reduced your charges, amended the contract to reduce the charges

A: No.

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Q: So then, in your opinion, its unusual in the direct mail industry to reduce your charges in an effort to reduce --

A: By a legitimate --

Q: -- client --

A: -- by legitimate business people for a political organization, yes and I would think it would be a violation of the law, too. (Stone Dep: pages 81-82)

Mr. Craver testifies to the contrary:

Q: Okay.

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If your company co-owned the client's mailing list, would you apply income received as a result of the co-ownership to the client's outstanding debt?

A: We do.

Q: Okay. And even if that's not provided for in the contract --

A: Yes.

Q: -- would you do that?

A: Yes. (Craver Dep.: Page 51)

Mr. Craver later testifies similarly:

Q: Okay.

Now, you may have covered this in the answers that you have given previously, but I just want to be sure I everything, so I'm just going to go through a few more questions; and they relate to a company's co-owning mailing lists with their clients.

Okay.

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Is it a usual and normal practice for such a company to offset a client's debt by actual rental income from the mailing lists?

A: It is our usual practice. I don't know whether it's the industry's usual practice. (Craver Dep.: pages 60-61.)

(D) Payment of penalties or liquidated damages: Ms. Stone testifies that liquidated damages are unusual, whereas Mr. Craver testifies that such financial penalties are typical.

A: ... 4(f) -- I have seen this in their contracts before and only their contracts, where their -- this is a penalty clause, where they have to pay liquidated if they try to cancel the contract prior to the expiration date. This is part of the indentured servitude thing, buying their way of freedom.

I believe I'm correct in saying they're the only ones I've ever heard that have done this -- \$25,000 is actually less than I've seen in some of their contracts. I've seen them charge clients even more.

And you can see if they have had paid this \$25,000 that that's disincentive for them to ever try to terminate before the expiration date. But that's unusual. That is an unusual thing. (Stone Dep: pages 126-127.)

Mr. Craver testifies that such financial penalties in the termination of a contract are not unusual:

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A: . . . Generally, in political fundraising, the contracts are for fixed terms. Often fairly onerous terms. That, if it is terminated the list reverts to the contractor. If it is terminated, there are certain financial penalties. The -- concept of terminating it and being paid only for this -- for the services incurred to the point of termination is -- is not that typical. (Craver Dep: pages 28-29.)

(E) Reduction in Price of Mailing Packages: Ms. Stone testifies that it is unusual to reduce the compensation for fundraising packages, whereas Mr. Craver disagrees:

Q: Now, if the company were to, in 1989, amend this contract to reduce the compensation of \$50 per 1,000 fundraising packages --

A: Mm-hmm.

Q: -- To \$35 per 1,000 fundraising packages, would that be unusual, normal charge in this scheme of this contract in 1989?

A: In the middle of the contract, no, that would not be, not when you have specific terms set out.

Something -- if they decided to terminate and re-negotiate a contract, that's a whole different can of worms. (Stone Dep.: page 136.)

Mr. Craver testifies as follows:

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Q: Okay.

Has your company ever, in an effort, to reduce the debt of a client, amended the contract reducing the fee?

A: Yes.

Q: -- for services?

A: Yes. (Craver Dep.: page 49.)

Respondents submit that these are merely highlights of substantial and material differences between the expert opinions proffered by the Counsel's brief. However, it clearly demonstrates that due to the diversity of opinion pertaining to what constitutes industry standards, the lack of agreement on these issues by the two expert witnesses evidences Respondents' position. The industry standards for direct mail are very broad and by virtue of the fact that there are conflicting testimonies by the Counsel's own expert witnesses, pertaining to the material matters in the RDI contract evidences that the RDI contract did come within the industry standards.

6. Counsel fails to evidence how the RDI contract which, they contend is heavily weighted in favor of RDI constitutes an in-kind prohibited corporate contribution to NSPAC.

The OGC Brief presents a very awkward argument. To wit, NSPAC entered into a contract with RDI that was not usual and normal in industry standards because it overwhelmingly favored

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RDI, providing RDI with exceptional value, compensation, and fees. Counsel states, "As the discussion regarding the terms of the underlying agreement between the company and NSPAC will illustrate, not only is the overall nature of the RDI/NSPAC contract contrary to that of contracts usually and normally entered in the industry, *the RDI/NSPAC contract is heavily weighted in the company's favor.*"<sup>13</sup> (Emphasis Added.) Pertaining to the exclusivity provision of the contract, Counsel states, "The witness commented that "exclusive contracts are like prison sentences."<sup>14</sup> "As a whole, this witness characterized the relationship created under the RDI/NSPAC contract as "one of jailor and prisoner" and commented that "there is no substantial freedom for the client. There is every freedom for the agency. It is quite a one-sided contract."<sup>15</sup> Regarding the co-ownership of the mailing list during the term of the contract, the five (5)-year contract duration, the one hundred fifty-(150) day contract termination period, and the requirement that NSPAC pay RDI twenty-five thousand dollars (\$25,000) if the contract is terminated prior to the five-(5) year duration, the Counsel cites, "The witness explained that these provisions worked together to the disadvantage of the client, subjecting the client to a form of "indentured servitude." The witness also pointed out that the RDI/NSPAC contract entitled RDI to unlimited use of mailing lists during the term of the agreement and prohibited the client from renting any list created under the contract without RDI's prior written approval."<sup>16</sup>

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<sup>13</sup> OGC Brief, page 7.

<sup>14</sup> OGC Brief, page 9.

<sup>15</sup> OGC Brief, page 10

<sup>16</sup> OGC Brief, page 9-10

The case which the Counsel's office presents in this matter is that the contract was of immense value to RDI. Counsel's office argues that NSPAC failed to receive from RDI what they otherwise would be entitled to receive by "usual industry standards."

The paradox in this factual and legal argument presented by Counsel is found when its measured against the elementary FECA definition of a "contribution." That applicable definition in the FECA defines "contribution" to include: "any direct or indirect payment, distribution, loan (other than from a bank, pursuant to applicable banking law and regulations, in the ordinary course of business), advance, deposit, or gift of money or any services or anything of value." Counsel makes a very strong argument that NSPAC has not received any direct or indirect payment, distribution, advance, deposit, let alone any gift, service, or anything of value as a result of the RDI contract. Rather, it is RDI that has received from NSPAC the inordinate, "things of value." Specifically, the higher fees, rights to the mailing list, the compounded agency/broker fees, etc. Counsel's brief fails to bridge the inequities bestowed upon NSPAC and how those would constitute a prohibited corporate contribution.

The single argument in the OGC Brief whereby such linkage is attempted, is conclusionary in nature and fails to point to any documents, testimony, or materials uncovered during discovery that would substantiate the claim. That claim proffered by Counsel states, "Again, however, we emphasize that although the underlying agreement between the companies and NSPAC ultimately worked to NSPAC's disadvantage in providing direct mail fundraising services, the companies provided something of value to NSPAC -- voter contact that *potentially* influences federal elections

no matter how much money is raised -- for which approximately \$1.3 million is due pursuant to the terms of the RDI/NSPAC contract." (Footnote omitted.) (Emphasis added.)<sup>17</sup>

Counsel's premise is that the NSPAC direct mail influenced federal elections, presumably thereby triggering the §441b prohibition. As will be discussed below, it is Counsel's contention that the improper extension of credit occurred between June 1989 and June of 1991<sup>18</sup>. After a four-(4) year investigation, and production of literally thousands of pieces of material, including direct mail pieces, listings of all direct mail pieces sent out during the term of the investigation, one would think the Counsel's office could provide substantial evidence to back this rather conclusive and flimsy statement upon which turns a \$1.3 million alleged violation. If direct mail pieces were sent out and the text of those direct mail pieces met the necessary FECA standard, i.e. expressly advocate the election or defeat of certain federal candidates,<sup>19</sup> then it is incumbent upon the Counsel to tender those specific pieces of direct mail which they believe evidences their contention. It is not enough to claim that such direct mail "potentially influences" federal elections. By their own statement, this is the critical issue -- the very basis upon which they are asking the Commission to make a finding of probable cause for a \$479,230 (Four Hundred Seventy Nine Thousand Two Hundred Thirty Dollars) corporate contribution. NSPAC forwarded to the Commission four (4) banker boxes of documents containing direct mail samples and computer printouts which identified the specific mail packages,

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<sup>17</sup> OGC Brief, pages 10-11.

<sup>18</sup> OGC Brief, page 19. As will be discussed below, this arbitrary cut-off of June 1989 is not substantiated with any evidence, testimony, or the like. However, for the sake of rebutting Counsel's argument, it will be accepted for purposes of discussion pertaining to this potential in-kind contribution through the use of the direct mail.

<sup>19</sup> FEC v. Massachusetts Citizens for Life, Inc. 479 U.S. 238 (1986)

their titles, etc.<sup>20</sup> Yet, not one piece of mail is offered by the Counsel to substantiate this all-important argument.

It is also incumbent that if Counsel is relying upon such direct mail to substantiate its position, it should have included its Brief to provide Respondent's counsel with an opportunity to rebut and impeach such evidence. Not having been presented with any such evidence, Respondent submits Counsel has failed to evidence in any form whatsoever the very basis upon which they claim a prohibited corporate contribution was made. Failing to do that, the Commission should not and cannot find a violation based on one speculative portion of a paragraph in the Counsel's brief.

7. By Counsel's own admission in the OGC Brief, NSPAC's entering into a contract with RDI in 1986 was not an improper extension of credit.

In a very relevant and telling statement, the Counsel cites in its Brief at page 15, footnote 9, that the improper extension of credit which it is alleging occurred in this matter, may only be viewed from the point of August 1988 up to June of 1991. Counsel notes that in MUR 2638, the Commission found no reason to believe that the RDI companies had extended credit to NSPAC outside of the ordinary course of business for the period between April 1986 and July 1988.

That one concession by the General Counsel voids any argument that the Commission can find that the RDI contract was an improper extension of credit at the time that it occurred. The Counsel, is then left only with the even more difficult task to prove that at some point during the time continuum of August 1988 and June 1991 there was a definitive threshold crossed by RDI by improperly extending credit to NSPAC.

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See NCPAC Response to Interrogatories dated December 5, 1994, a copy of which is attached hereto.

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Counsel states that, in light of the apparent early success of the RDI/NSPAC fundraising program for the period of issue - August 1988 through June 1991 - we do not view NSPAC as a new committee in considering the company's extension of credit but instead view it as having established a successful track record with RDI prior to that period.<sup>21</sup> In the testimony of Ms. Stone, she indicates that a political committee which has a house file, such as NSPAC(128,000 names), it would be a whole different story as to how long they would permit the client to continue to mail. In her testimony, she indicates that by industry standards, that could be upwards of two (2) years. (Stone Dep.: page 43) Mr. Craver in his deposition substantiates the fact that an ongoing political committee should be given upwards of three (3) years to continue fundraising, notwithstanding the incurrence of debt (Craver Dep.: page 46) In the case of NSPAC, this clearly appears to be justified, especially in view of the fact that this Committee raised in excess of ten million dollars (\$10 million), clearly the largest fundraising committee during the 1988 cycle.

Counsel offers no legitimate evidence or testimony that the ongoing extension of credit to NSPAC was not done in the ordinary course of business. (1) General Counsel concedes that entering into the contract with RDI and NSPAC was not an improper extension of credit from April 1986 through August 1988 (2) NSPAC had a 2 year "successful track record," and a house file of one hundred twenty-eight thousand (128,000) names, (3) the "expert" testimony of both of Counsel's witnesses acknowledged that two (2) years is not an unusual amount of time to continue mailing.

8. The Counsel's calculation of the ratio of debt, and the calculations on the amount of the alleged violations are grossly inaccurate and cannot be relied upon by the Commission.

OGC Brief states that at the end of 1988, the NSPAC debt equaled thirteen percent (13%) of its income; at the end of 1989, the debt equaled three hundred percent (300%) of NSPAC income; at the end of 1990, the debt equaled five hundred thirty-three percent (533%) of the income.<sup>22</sup> Respondent is at a complete loss as to how the Counsel's office arrived at these astronomical percentages. In addition, using these raw percentages during the deposition with the expert witnesses elicited unjustified and inflammatory comments from the witnesses pertaining to the "industry standard" of generating that percentage of debt.

Counsel does not provide an explanation for its calculation to reach those percentages. Therefore, Respondents are not able to comment on, nor critique the technique which was employed. However, Respondents has set forth below a chart of its own, describing the amount of new debt versus the amount paid to RDI during the period in question.

First, with reference to the debt chart at OGC Brief pages 15 and 16, the first item that is obvious is that the net debt in August of 1988 was one million, four hundred forty-five thousand, four hundred twenty-one dollars (\$1,445,421) compared to the June 1991 debt of one million, two hundred sixty-eight thousand, nine hundred thirty nine dollars (\$1,268,939) - a net *reduction* in debt of one hundred seventy-six thousand, four hundred eighty-two dollars (\$176,482.) If, by Counsel's own admission there was not an improper extension of debt by RDI to NSPAC from April 1986 up until July 1989, and the subsequent debt during the course of time in question did not generate a net increase but rather a net decrease of one hundred seventy-six thousand, four hundred twenty-six dollars (\$176,426), then it is readily apparent that during the time in question, RDI's position relative to the outstanding debt was actually better in June of 1991 than it was in August of 1988.

Respondents are at a loss as to the Counsel's rationale that, given this net improvement, there could be an accusation of an improper extension of credit during that time period.

Secondly, if one were to include, for argument sake, the June, 1989 debt the ratio of total debt to total income during the life of the RDI contract with NSPAC was approximately twelve and one-half percent (12.5 %) (\$10.2 million raised, debt of \$1.268.) It is perplexing as to why the Counsel did not present those raw numbers to their two expert witnesses to elicit their opinion, rather than using the unexplainable percentages cited in the depositions.

Third, if the Counsel is attempting to demonstrate that somewhere during the time continuum of August 1988 to June 1991 there was a spike in the amount of debt which should have forewarned them not to go further with the direct mail, the plain numbers do not substantiate such a finding. In the period in question, there were very consistent percentages of debt increase. This is demonstrated by the numbers set out below. From 1988 to 1989, there was net new debt of three million, one hundred nineteen thousand, one hundred thirty-four dollars (\$3,119,134) and new payments of two million, seven hundred ninety-eight thousand, nine hundred forty-four dollars (\$2,798,944.) This resulted in a net new debt of three hundred twenty thousand, one hundred ninety dollars (\$320,190.) Therefore, NSPAC was operating at an eleven point four percent (11.4%) debt at the end of 1989. Specifically, they raised and paid RDI eighty-eight point six percent (88.6%) of the monies spent by RDI during that time period.

At the end of 1990, the total new debt for the period in question from August 1988 through the end of 1990 totaled three million, three hundred and two thousand, seven hundred and seventy-eight dollars (\$3,302,778.) NSPAC paid RDI a total of two million, nine hundred forty-four

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thousand, six hundred seventy-three dollars (\$2,944,673.) This resulted in an aggregate net debt of three hundred fifty-eight thousand, one hundred and five dollars (\$358,105) (\$3,302,778.00 - \$2,944,673.00.) This represented an aggregate new debt of twelve point one percent (12.1%) of monies spent by RDI. Specifically, NSPAC paid RDI eighty-seven point nine percent (87.9%) of the expenses incurred by RDI on behalf of NSPAC. Escalation from eleven point four percent (11.4%) to twelve point one percent (12.1%) and a thirty-seven thousand, nine hundred fifteen dollar (\$37,915) net debt increase during the course of the year from 1989 to 1990 are not numbers which, according to the expert witnesses, would generate alarms in accordance with the industry standards fore-warning them to cease any further mailing.

The last year in question, when added to these numbers, reflects a very similar trend. Total debt from 1988 through 1991 for the period in question was a total of three million, three hundred ninety-two thousand, five hundred and sixty-two dollars (\$3,392,562) of which NSPAC paid RDI three million, fifteen thousand, two hundred ninety-five dollars (\$3,015,295.) This resulted in a net debt increase from 1988 to 1991 of three hundred seventy-seven thousand, two hundred sixty-seven dollars (\$377,267.) This new debt represented twelve point five percent (12.5%) of the aggregate monies raised. In other words, NSPAC was able to pay a total eighty-seven point five percent (87.5%) of the expenses incurred by RDI during the period of 1988 to 1991. The chart below summarizes these numbers.

<i>Time Frame</i>	<i>Aggregate New Debt</i>	<i>Aggregate New Payments</i>	<i>Aggregate Net Debt</i>	<i>Percentage of Debt to Income</i>
August '88 - December '89	\$3,119,134	\$2,798,944	\$320,190	11.4%
August '88 - December '90	\$3,302,778	\$2,944,673	\$358,105	12.1%
August '88 - June '91	\$3,392,562	\$3,015,295	\$377,267	12.5%

The Commission should note that the percentage of aggregate net debt to income during the period in question is virtually identical to the net debt over the life of the Committee -- twelve point four percent (12.4%) (one million, two hundred sixty-eight thousand, nine hundred thirty-nine dollars [\$1,268,939] debt on income of \$10.2 million.)

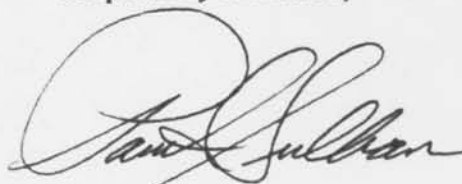
Lastly, Counsel contends that June 1989 is the cut-off date at which RDI commenced the inappropriate extension of credit. There is no explanation whatsoever in the OGC Brief, not even pointing to the expert testimony, as to the justification for the arbitrary choice of that date. In fact, there was a twenty-thousand dollar (\$20,000) payment to RDI in the month of July 1989. Respondents therefore dispute the choosing of June 1989 as the cut-off date since there is no evidence whatsoever to explain the Counsel's justification for the choosing of this time period. In addition, Counsel alleges that during June 1989 through June 1991, there was four hundred seventy-nine thousand, two hundred and thirty dollars (\$479,230) worth of credit extended in violation of §441b. Counsel, however, cites to the gross amount of monies spent-not credit iextended. Counsel fails to offset expenses by the two hundred seventy thousand three hundred sixty-six dollars



(\$270,366) of income which was received by RDI. Therefore, the net extension of credit during that time in question is two hundred eight thousand, eight hundred sixty-four dollars (\$208,864.)

Conclusion: For the reasons set out above, Respondent requests the Commission making a finding of No Probable Cause and close the file on this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul E. Sullivan".

Paul E. Sullivan

Counsel for Respondent

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**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

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September 11, 1996

**VIA MESSENGER**

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Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463  
Attn: Tracey L. Ligon

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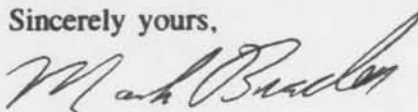
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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Re: Response Dynamics, Inc. - MUR 3638

Enclosed is the correct version of the Response Dynamics, Inc. brief in MUR 3638. The version that was initially sent to your office was a word processing error in which an earlier version was printed instead of the final executed copy on appropriate stationery. Please destroy that version and replace it with the enclosed actual final executed version on the beige bond stationery. As was indicated in the original cover letter, it is our intention to provide you on Thursday, September 12, 1996 with the nine copies of the brief with bound appendixes.

If you have questions, please do not hesitate to contact me.

Sincerely yours,



E. Mark Braden

EMB/rvn

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Response Dynamics, Inc., et al.

MUR 3638

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

RESPONSE DYNAMICS, INC. BRIEF

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The complaint filed by the Democratic National Committee ("DNC") in this Matter Under Review ("MUR") is a transparent attempt to use the Federal Election Commission ("Commission") enforcement process to chill the political activities of certain political opponents which the DNC found particularly annoying and effective. That this MUR remains open four years after the DNC's initial complaint and the General Counsel's office is recommending to the Commissioners that they find probable cause to believe that a violation has occurred is a chilling indictment of the General Counsel's office. It is difficult to determine whether the General Counsel's office is prejudiced in regard to these political committees and businesses or is just so unfamiliar with the direct mail business that it actually believes that Response Dynamics (RDI) made illegal corporate contributions to the National Security Political Action Committee (NSPAC) and the Republican Challengers Committee (RCC).

RDI contracted with NSPAC and RCC to perform direct mail fundraising. The contracts entered into were RDI's standard, pre-printed forms. The extension of credit to both NSPAC and RCC occurred in the ordinary course of business, and RDI has made every reasonable attempt to collect or reduce the outstanding debts of NSPAC and RCC. Simply put, RDI's business relationships with both NSPAC and RCC were typical of RDI's relationship with other political committees and nonpolitical organizations. RDI submits with this brief affidavits of numerous expert witnesses supporting this position.<sup>1</sup> An examination of the deposition testimony of the General Counsel's two expert witnesses, the sole evidence

<sup>1</sup> The sworn affidavits of five experts in the direct mail field are attached in Appendix A. RDI anticipates supplementing these affidavits with those of additional experts.

in support of its position, reveals that the General Counsel's own experts' testimony is contradictory at best and unquestionably biased.

### LEGAL FRAMEWORK

It is unlawful for a corporation to make a contribution or expenditure in connection with a federal election. 2 U.S.C. § 441b(a). A contribution or expenditure includes any loan or advance or money or anything of value. 2 U.S.C. § 441b(b)(2). The Commission's regulations are quite specific. A corporation may extend credit to a political committee if the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors which are of similar risk and size of obligation. 11 C.F.R. § 114.10(a) (1990). Neither the Commission's regulations nor the Act require that political committees be treated in commercial situations in other than a normal business manner.

The General Counsel's attempt to subject RDI to the requirements of 11 C.F.R. §§ 116.3 & 116.4 should fail. Those regulations were enacted after the events at issue in this matter. RDI cannot be expected to conform its activities to regulations not yet enacted at the time the activities took place. Nevertheless, RDI's relationships with NSPAC and RCC withstand scrutiny even under these regulations.

The Commission's present regulations define the specific factors the Commission is to consider in determining whether a transaction involving credit was done in the ordinary course of business. The Commission will consider: (1) whether the commercial vendor followed its established procedures and past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c).

A corporation may settle a debt if the corporation has treated the outstanding debt in a commercially reasonable manner. 11 C.F.R. § 114.10(c) (1990). A commercially reasonable settlement occurs where the credit originally extended conformed to the provisions of 11 C.F.R. § 114.10(a), the corporation has made all commercially reasonable efforts to collect the debt, and the corporation has pursued its remedies against the debtor in a manner

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similarly intense to that employed against nonpolitical debtors.<sup>2</sup> 11 C.F.R. § 114.10(c) (1990).

### **The Commission's Role in Reviewing Vendor and Political Committee Business Relations**

The substance of the General Counsel's brief is that RDI violated 2 U.S.C. § 441b by extending credit outside the ordinary course of business to the NSPAC and RCC.<sup>3</sup> The General Counsel's position is that a contribution was made because the contracts and business relationships between RDI and these two political committees were not standard and ordinary in the vendor's industry.

The General Counsel argues that the contracts between RDI and the two political committees are more vendor favorable than the usual contractual terms in the industry,<sup>4</sup> so it concludes that RDI has made an illegal corporate contribution to these committees. Even if the Commission were to accept the General Counsel's assertions that the business relationships were not consistent with usual and normal practice in the industry, the conclusion drawn is ludicrous. The ban on corporate contributions, and the Commission's regulations promulgated to enforce that ban, are designed to keep corporate resources from being improperly used in the federal election process. The very definition of contribution states that a contribution is anything of value. 2 U.S.C. § 441b(b)(2). This statutory provision is not designed to generally regulate contractual relationships between vendors and political organizations. The Commission has no broad writ to second guess the decision-making of political committees or corporate vendors, except in the circumstance where the relationship might be used to circumvent 2 U.S.C. § 441b.

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<sup>2</sup> The General Counsel does not even address this issue. In RDI's initial response, RDI clearly outlined for the Commission that all commercially reasonable efforts to collect any RCC and NSPAC debt had been made.

<sup>3</sup> The General Counsel's office has effectively conceded that RDI followed its established procedures and past practices in its relations with NSPAC and RCC.

<sup>4</sup> General Counsel's brief.  
Page 8: "... RDI/NSPAC contract is heavily weighted in the companies favor."  
Page 11: "... NSPAC entered a contract that contained terms that were ultimately more favorable to the companies."



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The General Counsel in MUR 26/239 (1979) cited cases demonstrating "the unanimous decision of the American courts" that they will not intervene in business decisions motivated by rational purpose and made in good faith. See Miller v. AT&T, 507 F.2d 759 (3d Cir. 1974); Bellis v. Thal, 373 F. Supp. 120 (E.D. Pa. 1974), aff'd mem., 510 F.2d 969 (3d Cir. 1975); Cummings v. United Artists Theatre Circuit, Inc., 204 A.2d 795 (Md. 1964). See also, Panter v. Marshall Field & Co., 646 F.2d 271 (7th Cir.), cert. denied, 454 U.S. 1092 (1981). The General Counsel's brief fails to provide the Commission with any evidence or argument that the business decisions of RDI were not motivated by "rational purpose" and were not "made in good faith." The business decisions of RDI were motivated by the rational purpose of realizing a profit. There is not even an allegation in the General Counsel's brief that RDI did not act in good faith. Accordingly, the Commission should not intervene in RDI's business decisions.

The Commission's review of a commercial relationship is restricted to whether or not a corporation has provided services or goods to political candidates or organizations for no compensation or at a compensation level lower than would be the case in the ordinary course of business.<sup>5</sup> Incredibly, the General Counsel makes the assertion that "evidence regarding the overall profitability of the contractual relationship is irrelevant."<sup>6</sup> The first test of whether a contract or business relationship is reasonable and normal is whether it is designed

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<sup>5</sup> RDI entered into their fundraising agreement with NSPAC prior to the Americans for Bush Independent Expenditure (AFB) project. At the time the agreement was signed, RDI did not anticipate the scope of this program. As the AFB project began, it soon became apparent to both RDI and NSPAC that the volume of mail being produced would be extraordinarily large and should qualify for volume discounts with a lower pricing arrangement. However, after discussing contract changes with legal counsel, RDI concluded it was required to continue charging NSPAC the higher rates and could not discount any of RDI services for fear that such a discount might be viewed as illegal corporate contribution by the Commission. RDI charged NSPAC five cents per piece mailed compared to an Industry standard of two cents per piece mailed with a volume comparable to the Republican National Committee or the Republican Senatorial Committee work. In addition to the RDI fee, other discounts should have been possible for printing, mailing lists and letter shop work, but again, due to the fear of a corporate contributions charge, RDI concluded it should continue the higher rates to avoid risking attack for violating the Act. Such normal volume discounts would have amounted to more than \$750,000 during the course of the AFB project if RDI concluded it was free to make business decisions without concern of Commission review.

<sup>6</sup> General Counsel's brief, Page 14.

to be and is profitable for the commercial business. By asserting that overall compensation is irrelevant, the General Counsel's office asks the Commissioners to ignore the reality of RDI's business relationship with NSPAC and RCC for some mystic industry standard not based on commercial profit for the vendor.

### **The Basis for the General Counsel's Recommendation**

The General Counsel's recommendation that the Commission find probable cause to believe that a violation has occurred is based solely upon its assertion that the business relationship and extensions of credit between RDI and the two political committees were not standard and ordinary in the vendor's industry. This assertion, in turn, is based solely upon opinions expressed by two "experts" who were provided with certain hypothetical situations which the General Counsel's office states reflected the actual course of dealings between the companies and NSPAC and RCC.

However, the hypothetical questions posed to the General Counsel's experts do not accurately reflect the RDI/NSPAC/RCC relationship, nor do the answers to these misleading questions support the General Counsel's recommendations.<sup>7</sup> To understand why RDI's actions on behalf of NSPAC and RCC conformed to industry standards, one must understand how direct mail works, and in particular, understand the distinction between prospect mailings and house file mailings.<sup>8</sup> Simply put, in direct mail, it is expected that prospect mailings, designed to help the client build a house file, will lose money. However, in a direct mail fundraising campaign, once a house file is built, the money lost on prospect mailings will be replaced, and hopefully supplemented, by mailings to the house file. The General Counsel's position is that RDI's mailings on NSPAC's and RCC's behalf should have been discontinued before mailings to the house list were pursued. This position does not conform to, and indeed is directly contrary to, the legitimate standard practices in the direct mail industry.

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<sup>7</sup> See Appendix B (highlighting testimonies of the General Counsel's own expert that support RDI's position that its dealings with NSPAC and RCC conformed with industry standards.)

<sup>8</sup> See Association of Direct Response Fundraising Council brochure "What Your Organization Needs to Know About Direct Fundraising," attached as Appendix C.

## National Security Political Action Committee

In 1986, Elizabeth Fediay sought to retain the services of a private direct mail firm for the purposes of developing a contributor base for NSPAC, capable of generating sufficient revenues for the organization's planned political activities as a multi-candidate political action committee. Ms. Fediay was the Treasurer and principal operating officer of NSPAC. In the Spring of 1986, Ms. Fediay contracted with RDI for direct mail services and continued to utilize RDI's services until NSPAC ceased its fundraising efforts in 1991. Ms. Fediay signed on behalf of NSPAC the standard RDI "boiler plate contract" which RDI utilizes for its clients. RDI discontinued its services for NSPAC when NSPAC ceased its fundraising efforts in 1991.

The General counsel's analysis of this business relationship is flawed from beginning to conclusion.<sup>9</sup> The General Counsel concludes its NSPAC discussion by presenting a chart purporting to show "the debt to income ratio" increasing from 13% to 533%.<sup>10</sup> This chart forms the principal basis of the General Counsel's hypothetical questions to its experts which "establishes that the continuous extensions of credit by RDI are not usual or normal in the Industry."<sup>11</sup> Why did the General Counsel construct this chart when all the business and finance records were produced by the Respondents to the General Counsel and could have been reviewed by the General Counsel's witnesses? This chart is utter nonsense. It is misleading to the point of total misrepresentation. The Respondents have attempted to determine without success how the General Counsel's chart was constructed, what the percentages are based on and what possible use this chart is to an understanding of the RDI/NSPAC relationship. It is easy to construct questions on any situation and to elicit a

<sup>9</sup> The brief contains numerous unwarranted and irrelevant derogatory statements. As an example, the General Counsel quotes its expert saying: "Billings affect how a company's balance sheet looks; companies can get lines of credit based on the billings that are outstanding." Why this statement could have any relevance to the Commission's analysis of this matter is not clear, but the Commissioners need not determine its relevance because it does not apply to RDI. RDI's credit relationship with its banks have never allowed for the inclusion of nay debts that were unpaid for 90 days or more for lines of credit purposes. Any amount due RDI that has been unpaid for more than 90 days has absolutely zero value for lines of credit purposes.

<sup>10</sup> General Counsel's brief, Page 17.

<sup>11</sup> General Counsel's brief, Page 18.

desired answer if the questioner does not present all material facts. One aspect of the chart is clear -- the questions drawn from the chart do not disclose that the million-dollar plus debt remained fixed at the beginning of 1989, rendering any debt-to-income ratio percentage analysis meaningless for post 1988.

The General Counsel's own expert "acknowledged that [the General Counsel's debt ratio analysis] would be viewed differently if the debt resulted from one large unsuccessful mailing."<sup>12</sup> The General Counsel failed to explain to its experts that the primary reason for the NSPAC present debt was a single large scale August/September 1988 fundraising effort in which approximately 8 million letters were mailed, resulting in a loss of over \$1 million. Also, the General Counsel failed to explain the debt was incurred principally from prospect lists, while RDI's attempts to reduce or erase the debt were mailings to the house list.

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The General Counsel states that: "[b]y June 1989, at the latest, it should have been very clear to both RDI and NSPAC that any efforts towards fundraising, the stated goal of the RDI/NSPAC contract, or toward reducing NSPAC's debt were not working."<sup>13</sup> That statement is simply false. It is impossible to determine from the brief whether the General Counsel is being disingenuous or does not understand direct mail financial reports. The records provided to the General Counsel are clear. Subsequent to June 1, 1989, RDI mailed 46 different fundraising packages to the NSPAC list on NSPAC's behalf, producing net income totalling \$137,670. The last mailing by RDI for NSPAC that produced net income was mailed on February 5, 1991, with \$421.42 in net income. The last mailing by RDI on behalf of NSPAC was mailed on February 26, 1991 and lost \$751.62. Subsequent to this mailing and due to RDI's belief that the effort expended to continue to produce income outweighed the commercial benefit available to RDI, RDI ceased mailing on NSPAC's behalf.

The General Counsel states, "[t]herefore, this Office concludes that, at the latest, the extensions of credit made by the respondent companies to NSPAC subsequent to May 1989, which total \$479,230, were made outside the ordinary course of business in violation of

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<sup>12</sup> General Counsel's brief, Page 18.  
Stone deposition, Page 98.

<sup>13</sup> General Counsel's brief, Page 19.



Section 441b."<sup>14</sup> This is a misrepresentation. The \$479,230 figure represents the amount billed by RDI, not new extensions of credit. The General Counsel fails to acknowledge the \$270,396 paid to RDI for these services.

In addition, the General Counsel does not recognize \$585,284.92 in income earned from NSPAC mailing list rental which RDI can exercise its contractual rights in conformance with industry practice, and apply the list rental income up to the full amount of the NSPAC debt. The General Counsel's brief states, "[i]n addition, the expert testimony indicates that it is not usual or normal in the industry for a company that has contracted with a client on terms such as those contained in the RDI/NSPAC contract to offset or issue a credit against the client's debt based on the amount of income received as a result of their use of their mailing list."<sup>15</sup> This is not an accurate restatement of the General Counsel's experts testimonies, as a cursory review shows. The depositions of Roger Craver and Ann Stone, the General Counsel's experts, do not support this General Counsel assertion.<sup>16</sup>

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<sup>14</sup> General Counsel's brief, Page 19.

<sup>15</sup> General Counsel's brief, Page 14, Footnote 7.

<sup>16</sup> Craver's Deposition, Page 51:

Q: If your company co-owned the client's mailing list, would you apply income received as a result of the co-ownership to the client's outstanding debt?

A: We do.

Q: OK. And even if that's not provided for in the contract ...

A: Yes.

Q: ... would you do that?

A: Yes.

Stone's deposition, Pages 82-83:

Q: If your company co-owned a client's mailing lists, would you apply income received as a result of co-owning the list to the client's outstanding debt?

A: No. But I do know that Viguerie, from time to time, at the end of a given year would sometimes give credits back because of income they



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The General Counsel's brief states: "the company's right to use NSPAC's mailing list was stated in absolute form and therefore represented its source of income over and above compensation for services provided." This statement reflects a fundamental flaw in the General Counsel's understanding of the direct marketing business. Mailing list usage and rights are a fundamental economic consideration in the construction of any direct mail business relationship. To attempt to pull this key economic component from the business relationship and state that its value to RDI is not compensation for services provided simply reflects an abject failure of the Counsel's office to grasp how this business is conducted. Even the General Counsel's own expert witnesses recognize that this is a key economic part of any direct mail contract, and they recognize that companies can and do apply their rental income to the outstanding debts of clients.<sup>17</sup>

The RDI/NSPAC Agreement provides that RDI may apply list rental credits in any sequence or time frame RDI wishes.<sup>18</sup> RDI could exercise its right to apply those credits to latest invoices first and oldest invoices last. The total credit for list rental amounting to \$585,284.92 would far exceed all additional new credit extended to NSPAC subsequent to May 1989 which, according to the General Counsel's brief, totals \$479,230.00. Therefore, no new credit was extended by RDI to NSPAC, contrary to the General Counsel's

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had made from the list. I do remember there were occasions.

Q: And would that be done just if that was ...

A: That was across all clients. It wouldn't be done for a particular client, though.

Q: And even if there was no provision in the contract that stated that income from the co-ownership of lists ...

A: Mm.hmm.

Q: ... would be used to reduce your debt, even that wasn't stated in the contract, that would be done?

A: That wouldn't be usual.

Q: Okay.

<sup>17</sup> See Appendix B.

<sup>18</sup> RDI/NSPAC Agreement, paragraphs 4.d. and 5.d.

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conclusion.<sup>19</sup> This offset credit could be applied on a basis consistent with the General Counsel's own expert testimony.

### Republican Challengers Committee

The RCC came to RDI as a new organization with no funds and no existing donor list (house file). RDI believed that a political committee formed to support non-incumbent Republican candidates for U.S. House of Representatives and Senate would be very attractive to potential Republican contributors. RDI anticipated, as with the standard industry experience of most new political committees, that prospecting mailing would not generate income. It was RDI's belief that following the initial prospecting mailings, through which a house file would be created, further mailing to that house file would generate net income for RDI and RCC. The first six mailings done for RCC were prospecting mailings. These concluded in June after the acquisition of approximately 5,000 donors for the RCC "house file." It was in July that RDI began house file mailings for RCC. House file mailings for a client are those which are expected to generate net income; prospecting mailings are generally not anticipated to generate income. It is the General Counsel's position that "extensions of credit made by the companies to RCC subsequent to June 1990 were made outside the ordinary course of business." This is wrong. Again, the General Counsel's conclusions reflect a fundamental misunderstanding of the direct mail business. For RDI to have stopped mailing at the end of the prospect period, June 1990, and not mail to the developed house file list would have been commercially unreasonable and directly contrary to standard industry practice.

All RCC's debt was incurred from prospect mailings designed to acquire a donor house list, who would provide long-term support for the RCC. As prospects responded to the mailings, they were added to the RCC "house list" where they become an ongoing source of donations. From July 13, 1990 through September 10, 1991, the house list program produced over \$40,877.00 in net income for RCC, which was used to reduce the RCC debt resulting from the prospect mail program. The General Counsel concludes that RDI should have stopped all work subsequent to June 30, 1990. This would have prevented RDI from conducting any house list mailings and blocked the production of any net income from the

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<sup>19</sup> General Counsel's brief, Page 19.

house list. By producing house list mailings for RCC, RDI was acting pursuant to normal industry standards and practices, and fulfilling its duties to its client.

The General Counsel concludes its discussion of the RDI's relationship with RCC with the statement "that the extensions of credit made by the companies to RCC subsequent to June 1990, which total \$315,719, were made outside the ordinary course of business in violation of 2 U.S.C. §441b."<sup>20</sup> RDI did not extend \$315,719 in credit to RCC subsequent to June 1990. RDI produced and performed work billed at \$315,719 in this time period. As in the NSPAC conclusion, the General Counsel does not provide the Commissioners with the essential fact that RCC paid RDI \$271,233 for services performed by RDI in this period.

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The General Counsel argues that "NSPAC was deeply in debt to the companies as a result of fundraising spearheaded by Mr. Brown."<sup>21</sup> and "NSPAC was carrying over \$1,000,000 in debt to the companies stemming from the fundraising activities in which Mr. Brown was involved."<sup>22</sup> From these statements, the General Counsel concludes that RDI could not have extended any credit to RCC pursuant to industry standards because of Mr. Brown's involvement with NSPAC. These statements in the General Counsel's brief are not correct, accordingly, the General Counsel's conclusion must fail. Floyd Brown had no authority as an employee or consultant to NSPAC to obligate NSPAC in any way. Floyd Brown had no authority to make any decision involving financial consideration. All decisions and approvals for RDI work on behalf of NSPAC were solely the responsibility of Elizabeth Fediay. RDI's primary contact with NSPAC during the entire term of its agreement with NSPAC was Elizabeth Fediay. No other person was authorized to approve any project or expenditure conducted by RDI on behalf of NSPAC at any time during RDI's relationship with NSPAC. Mr. Brown was not involved in any NSPAC fundraising activities with RDI. Elizabeth Fediay was the sole person authorized to conduct fundraising activities with RDI.

The General Counsel quotes its expert witness saying "that the principal factors relied upon on considering whether to extend credit to a client include the reputation of the people

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<sup>20</sup> General Counsel's brief, Page 25.

<sup>21</sup> General Counsel's brief, Page 23.

<sup>22</sup> General Counsel's brief, Page 24.

involved and whether the company has worked with the individuals before and whether any prior experience with the individual was positive."<sup>23</sup> These are precisely the factors on which RDI based its RCC decisions. RDI had known Floyd Brown over a period of time and the prior experience was positive. Based on RDI's relationship and knowledge of Floyd Brown and the donor name base that RDI had access to, including 120,000 NSPAC names, it appeared to RCC and RDI that there was a huge potential to raise money and conduct successful fundraising programs for RCC using RDI's resources.

### Commission Advisory Opinion on Direct Mail Credit Extensions

As a basis for its recommendation that the Commission retroactively apply its present regulations to RDI's past business practices, the General Counsel cites Advisory Opinion 1979-36 (A.O. 1979-36) which the General Counsel says: "address precisely the extensions of credit involved in this matter." It is possible to use that Commission's Advisory Opinion and the contractual relationship described therein as a hypothetical comparison basis for the vendor relationship between NSPAC and RDI. Using this agreement, specifically approved by the Commission and cited in the General Counsel's brief, and the mailing services and income from the NSPAC/RDI relationship, NSPAC would not be indebted to RDI. RDI would owe money to NSPAC.

In the Advisory Opinion, the Commission approves as normal industry practice an agreement between Working Names ( a direct mail firm) and a federal political candidate. The Advisory Opinion states, "irrespective of the actual total amount of fees and expenses, the [campaign] committee shall only be required to pay a maximum of 3/4 of the total amount of contributions received during the period of the agreement as a result of Working Names direct mail activities." The Commission goes on to conclude that this contract "is of a type which is normal industry practice."

All work RDI performed for NSPAC can be restated for comparative purposes. During RDI's relationship with NSPAC, a total of \$11,937,059.62 was raised. Twenty five percent of this total amount raised would equal \$2,984,264.91. The remaining seventy-five percent would equal \$8,952,794.71. During the performance of the RDI/NSPAC agreement, a total of \$1,521,611.00 was transferred from the direct mail program to NSPAC. This

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<sup>23</sup> General Counsel's brief, Page 22.

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represents 12.75% of total money raised. Correspondingly, \$10,415,449.62 was used to pay fees and costs associated with the direct response marketing program. This represents 87.25% of total funds raised. Therefore, comparing the RDI/NSPAC relationship with the approved 75%/25% (Working Names) contract in the Commission's Advisory Opinion, it can be seen that RDI was paid in excess of the 75%, more than the amount required in the Commission's Advisory Opinion which, the General Counsel argues, "provided adequate notice" to the "regulated community" of the Commission's position on direct mail contracts.

Extensions of credit made to NSPAC subsequent to May 1989 which the General Counsel claims were made outside the ordinary course of business, can also be examined in terms of the 75%/25% industry practice established in the Commission's Advisory Opinion. During the period subsequent to May 1989, \$756,890.41 was raised. RDI received payments totalling 76% of the total raised during this time frame, well within the 75%/25% rule established in the Commission's Advisory Opinion and cited in the General Counsel's brief. During the entire course of RDI's agreement with NSPAC and subsequent to May 1989, RDI's actual working relationship with NSPAC conformed with the payment percentages established as normal industry practice by the Commission's Advisory Opinion and cited in the General Counsel's brief as notice to the "regulated community."

The total amount raised during the RDI/RCC Agreement was \$390,685.33. The total amount transferred from the direct mail proceeds to RCC totaled \$4,000.00, or approximately 1% of the total amount raised. Therefore, 99% of all direct mail proceeds raised during the RDI/RCC Agreement were used to pay direct mail costs. The 99% is far in excess of the 75% provided for in the Commission's Advisory Opinion as normal industry practice. Subsequent to June 1990, \$318,577.46 was raised. From this total raised, \$314,577.46 was used to pay the direct mail program costs. Approximately 99% of all proceeds were used to pay direct costs of the program, far in excess of 75% approved as industry standard by the Commission and cited in the General Counsel's brief as notice to the "regulated community."

#### **General Counsel's Expert Witness Bias**

One of the two "experts" used by the General Counsel, Roger Craver, has been a consultant to or employed by the Complainant, the Democratic National Committee. Based on this fact, Roger Craver is simply an inappropriate expert for the Commission. Moreover,



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Craver admits under oath in response to the General Counsel's questioning that he has taken actions which seemingly violate the Act's ban on corporate contributions. Congress enacted 2 U.S.C. § 441b to keep corporate resources from being used improperly in federal elections, not to restrict standard commercial transactions. Roger Craver specifically admits that his company does its work for ideological reasons and the company is willing to reduce the debt of a political client sharing his (Craver's) political ideology. RDI has spent more than four years with a pending Commission enforcement action for what was clearly a successful commercial transaction, while the General Counsel's chosen expert Craver provides political corporate discounts, exactly the type of activity which the Act is meant to prohibit.<sup>24</sup> RDI counsel can only hope, based on Craver's testimony, that the General Counsel's office has opened an enforcement proceeding in regards to Roger Craver and Craver, Matthews, Smith & Company. If such an enforcement action is not pending, the Commissioners must question whether the General Counsel's office applies different legal standards to different companies.

The animosity of Ann Stone, the other General Counsel's expert, toward the respondent need not be uncovered in a cross examination by RDI counsel. Ms. Stone volunteers to the General Counsel her clear and powerful personal bias against Response Dynamics. This bias permeates every response of Ms. Stone to questions dealing directly with Response Dynamics. The General Counsel uses, as an exhibit for a question to Ms. Stone, guidelines for business practices from the Direct Marketing Association.<sup>25</sup> Incredibly, Ms. Stone responds that she is not familiar with their guidelines and would not "join that organization because Response Dynamics has been allowed to be a member, ..." <sup>26</sup> It is difficult to understand why the General Counsel's office, attempting to conduct a fair inquiry in this matter, would not conclude based upon this response alone that Ms. Stone was not a credible expert witness in this matter. Moreover, even a cursory reading of Ann Stone's deposition shows that she is merely providing a monologue on how she believes a direct mail business should be conducted, not an opinion of standard industry practice.

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<sup>24</sup> Craver Deposition Page 49, according to Mr. Craver and Craver, Matthews Smith and Co.: "would reduce the fee in order to help the campaign in order to get it through a difficult ...../a difficult period."

<sup>25</sup> Stone Deposition Exhibit #2. Also see: General Counsel's Brief, Page 8: "The industry's national association is called the Direct Marketing Association."

<sup>26</sup> Stone Deposition, Page 141.

### Unambiguous and Unbiased Expert Opinion

In four years the General Counsel has provided the Commission with only two "experts" who have reviewed hypothetical "facts" selected by the counsel's office. These experts appear to opine from the excerpts in the General Counsel's brief that certain hypothetical credit and services provided by a vendor like RDI were outside normal and usual industry standards. Respondent counsel urges the Commissioners to read the complete depositions. The General Counsel's own experts' depositions, when read completely, do not support the General Counsel's recommendations. A comparison between Craver and Stone's deposition shows significant disagreements on many fundamental direct mail practices.

In the month since receiving the General Counsel's brief, RDI has had its actual business records, not hypothetical excerpts or condensations and bogus percentage analysis, examined by a variety of experts in the industry. As is clear from their attached affidavits, after examining the contract documents and actual financial records, each expert RDI has contacted has concluded that the overall nature of the RDI-NSPAC/RCC relationships were usual and normal in the industry. RDI's extensions of credit and services provided to NSPAC and RCC were made in the ordinary course of business, and are within usual and normal standards of the direct marketing industry.

### CONCLUSION

RDI and related companies have been operating since 1981. RDI conducts fundraising for both political and tax-exempt organizations, so it is subject to substantial state and local regulation. RDI has spent significant financial resources and time complying with all applicable fundraising laws. As a professional fundraiser, fundraising counsel and solicitor, RDI has been registered in all states requiring such registration. At present, 33 states require RDI to register and/or produce fundraising bonds, reports and financial statements for different fundraising activities. Never in the history of its operations has RDI ever been accused of any wrong doing by any state or local governmental entity.

The General Counsel's recommendation that the Commission find probable cause to believe that RDI has violated the Act is based exclusively on the conclusion that RDI extensions of credit to NSPAC and RCC were outside the ordinary course of business. The

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General Counsel's office is conspicuously unqualified to determine whether any business practice of RDI is outside the ordinary course of business. The only expert opinions presented to the Commission, based upon an actual examination of RDI business and financial records unequivocally state that the extensions of credit by RDI to NSPAC and RCC were in the ordinary course of business pursuant to usual and normal industry practice. These un rebutted expert opinions provide the Commissioners with a more than adequate basis on which to immediately terminate this matter without any further analysis.

However, even if the Commissioners accept the General Counsel's conclusion, not actually supported by the General Counsel's expert witnesses, that RDI's extensions of credit were not pursuant to usual and normal industry practice, RDI would still not have violated the Act. The General Counsel asserts that RDI's business relationship with NSPAC and RCC is more favorable to RDI than the normal industry standard, but how this advantage for RDI transmutes into an impermissible corporate contribution is not explained.

The Commission should immediately close this Matter Under Review 3638 without further action.

By:



E. Mark Braden

Julie E. Hawkins

BAKER & HOSTETLER

Counsel for Respondents

## AFFIDAVIT

Mike Sholer, being first duly sworn, deposes and says:

1. My address at Keystone Management Consulting is 900 East Palmer Avenue, Suite 9, Glendale, California, 91205
2. I have been involved in the direct mail field with non-profit organizations since 1973. I have been <sup>owner</sup> ~~the President~~ of Keystone Management Consulting since 1975 (President since 1983), specializing in non-profit fundraising for Humanitarian, Charitable, Political and Educational organizations. I have a B.A. in History from the University of California at Irvine, and an M.A. in History from the California Graduate School of Theology. MS
3. I have examined the business and financial records relating to the services provided by Response Dynamics, Inc. and its associated companies ("RDI") to the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC").
4. The overall nature of the business relationship of RDI and NSPAC is neither unusual nor outside the norms of the direct marketing industry ("Industry").
5. No provisions found in the contracts I examined between RDI and NSPAC are outside normal Industry practice.
6. I have examined business records relating to the extensions of credit for mailing services performed by RDI for NSPAC from August 1988 through June 1991. In my opinion, the mailings from August 1988 through June 1991 for NSPAC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to NSPAC for services provided conform to usual and normal Industry practice.
7. RDI has undertaken all reasonable efforts to collect the debt owed to it by NSPAC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by NSPAC.
8. The overall nature of the business relationship of RDI and RCC is neither unusual nor outside the norms of the Industry.
9. No provisions found in the contracts I examined between RDI and RCC are outside normal Industry practice.

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10. I have examined business records relating to the extensions of credit for mailing services performed by RDI for RCC from February 1990 through June 1992. In my opinion, the mailings from February 1990 through June 1992 for RCC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to RCC for services provided conform to usual and normal Industry practice.
11. RDI has undertaken all reasonable efforts to collect the debt owed to it by RCC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by RCC.
12. See Attached

*Mike Sholer*  
Mike Sholer

Subscribed and sworn to before me this 10th day of September, 1996.

*Catherine L. Zappala*  
Notary Public

My Commission Expires:



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12. Not only does it appear that RDI used all reasonable efforts to collect the debts owed to it by NSPAC and RCC, the documents (Performance Summary and Aging Statement) show that they were active in pursuing this goal, in the best interest of their clients.

Prior to June 1989, Prospect mailings on behalf of NSPAC totalled 8,870,839 pieces (all but 28,000 in the Fall 1988 campaign) with a loss of \$738,379. Only during the Fall 1990 Congressional election campaign were there other Prospect mailings--and then only 50,000 pieces with a modest loss of \$13,748.

The only way to responsibly recover these losses was to use NSPAC's primary asset--their House file. Up until June 1989 (apparently the key date in question), RDI had mailed 1,339,798 pieces to NSPAC's House file for a net of \$581,298. As a proven winner, this list would naturally be the first resource for recovery of the Prospect debt. And, indeed, it was. Between July 1989 and April 1991, 366,491 pieces were mailed to this House file, netting \$87,453.

Of 68 mailings during this period, 50 were successful, 18 were not. As the effectiveness of the list subsided with the passing of time, the file being mailed was reduced from 10-25,000 names, to 8-8,000, to 4,000, to 2,500 and eventually to fewer than 2,000 names.

Nonetheless, the NSPAC debt which had been as high as \$1,267,863 on June 2, 1989 was reduced to \$1,174,896 on October 11, 1991. This reduction of \$92,967 closely resembles the \$87,453 net in House mailings conducted during the same period of time.

Finally, it appears that despite this net gain and subsequent reduction in the debt, RDI concluded that the reduced effectiveness of the House file (as per the shrinking size of the list) warranted a termination of mailings. The timing here was NOT too late, but consistent with industry practices and after having, in fact, successfully REDUCED the debt as far as possible.

Similarly with RCC: Prospect mailings from February to August 1990 totalled 350,736 pieces for a net loss of \$55,333. A small mailing of 23,000 pieces was made in June/July 1991 for an additional loss of \$5000.

Again, the prime asset, the House file, was used to reduce the debt. From July 1990 to September 1991, 199,218 pieces were mailed to the House file for a net of \$40,877. This covered 2/3 of the \$60,000 Prospect loss from the preceding period, successfully reduced the debt and did so in a professional manner, consistent with industry standards. Not only was the RCC unharmed by these mailings, but the goal--reducing the outstanding debt--was achieved by wisely using the RCC's assets to do so.

MS

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AFFIDAVIT

Lee R. Kessler, being first duly sworn, deposes and says:

1. I reside at 501 Slaters Lane, #706, Alexandria, Virginia, 22314.
2. I have 14 years experience in the direct response fundraising field. From 1989 to 1993, I worked as a consultant and managed direct mail campaigns for a variety of non-profit organizations in various fields, including health and welfare, religious, overseas relief and development, as well as political. From 1988 to 1989, I worked as a Senior Account Executive, and managed production in excess of 5 million direct mail packages per year for a non-profit organization. From 1982 through 1988, I worked as an assistant vice president managing support staff and account retention for a fulfillment, fundraising and Direct Response Processing service bureau. I received my B.S.W. from Temple University in 1976. I have affiliations with the Direct Marketing Association of Washington, the Fulfillment Management Association, and the National Business Forms Association.
3. I have examined the business and financial records relating to the services provided by Response Dynamics, Inc. and its associated companies ("RDI") to the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC").
4. The overall nature of the business relationship of RDI and NSPAC is neither unusual nor outside the norms of the direct marketing industry ("Industry").
5. No provisions found in the contracts I examined between RDI and NSPAC are outside normal Industry practice.
6. I have examined business records relating to the extensions of credit for mailing services performed by RDI for NSPAC from August 1988 through June 1991. In my opinion, the mailings from August 1988 through June 1991 for NSPAC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to NSPAC for services provided conform to usual and normal Industry practice.
7. RDI has undertaken all reasonable efforts to collect the debt owed to it by NSPAC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by NSPAC.
8. The overall nature of the business relationship of RDI and RCC is neither unusual nor outside the norms of the Industry.

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9. No provisions found in the contracts I examined between RDI and RCC are outside normal Industry practice.
10. I have examined business records relating to the extensions of credit for mailing services performed by RDI for RCC from February 1990 through June 1992. In my opinion, the mailings from February 1990 through June 1992 for RCC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to RCC for services provided conform to usual and normal Industry practice.
11. RDI has undertaken all reasonable efforts to collect the debt owed to it by RCC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by RCC.

  
Lee R. Kessler

Subscribed and sworn to before me this 10<sup>th</sup> day of September, 1996.

  
Notary Public

My Commission Expires: 9/30/97

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AFFIDAVIT

Colin L. Chapman, being first duly sworn, deposes and says:

1. I reside at 3357 Gallows Road, Falls Church, Virginia, 22042
2. During my ten years in politics, I have managed dozens of direct mail fundraising programs. I have been involved in the direct mail fundraising industry from the perspective of both the client as well as the agency. I served on the campaign staff of Senator Charles Grassley (R-Iowa) in 1986, and since then I have served as campaign manager, communications director or media consultant on more than 130 campaigns.

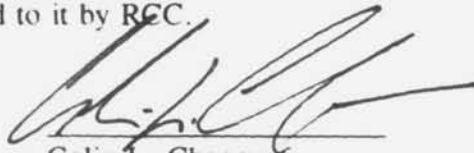
I am currently the Vice President for Creative Services at Welch/Norman Communications. I joined the Richard Norman Company after working with it on a joint project for the Republican Party of Delaware in 1994 where our candidates won every targeted election. I became Director of the Voter Communications Division at the Richard Norman Company on January 1, 1995.

I was an account executive for David Welch Associates during three different election cycles; I was also the executive director for Americans for a Balanced Budget from 1990 to 1994. I received a B.A. in Political Science from Washburn University in 1986.

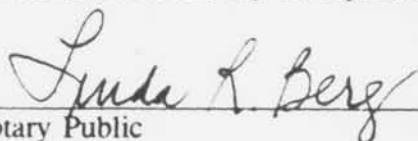
3. I have examined the business and financial records relating to the services provided by Response Dynamics, Inc. and its associated companies ("RDI") to the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC").
4. The overall nature of the business relationship of RDI and NSPAC is neither unusual nor outside the norms of the direct marketing industry ("Industry").
5. No provisions found in the contracts I examined between RDI and NSPAC are outside normal Industry practice.
6. I have examined business records relating to the extensions of credit for mailing services performed by RDI for NSPAC from August 1988 through June 1991. In my opinion, the mailings from August 1988 through June 1991 for NSPAC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to NSPAC for services provided conform to usual and normal Industry practice.

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7. RDI has undertaken all reasonable efforts to collect the debt owed to it by NSPAC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by NSPAC.
  8. The overall nature of the business relationship of RDI and RCC is neither unusual nor outside the norms of the Industry.
  9. No provisions found in the contracts I examined between RDI and RCC are outside normal Industry practice.
  10. I have examined business records relating to the extensions of credit for mailing services performed by RDI for RCC from February 1990 through June 1992. In my opinion, the mailings from February 1990 through June 1992 for RCC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to RCC for services provided conform to usual and normal Industry practice.
  11. RDI has undertaken all reasonable efforts to collect the debt owed to it by RCC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by RCC.

  
Colin L. Chapman

Subscribed and sworn to before me this 10<sup>th</sup> day of September, 1996.

  
Notary Public

My Commission Expires: 11-28-99



AFFIDAVIT

Richard F. Norman, being first duly sworn, deposes and says:

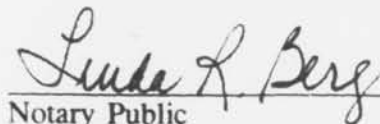
1. My address at the Richard F. Norman Company, Inc. is 11921 Freedom Drive, Suite 350, Reston, Virginia, 22090-5608.
2. Since 1987, I have been the President and Owner of The Richard F. Norman Company. The Richard F. Norman Company is Direct Mail Counsel for 19 clients including the Republican National Committee, other party affiliates, PAC's, and non-profit organizations. From 1983 to 1987, I was President of Bruce Eberle and Associates, which provided direct mail fundraising services for political candidates, political committees and non-profit companies. I attended undergraduate school at Bluefield College, in Bluefield, Virginia, and studied Political Science at the University of Richmond, in Richmond, Virginia.
3. I have examined the business and financial records relating to the services provided by Response Dynamics, Inc. and its associated companies ("RDI") to the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC").
4. The overall nature of the business relationship of RDI and NSPAC is neither unusual nor outside the norms of the direct marketing industry ("Industry").
5. No provisions found in the contracts I examined between RDI and NSPAC are outside normal Industry practice.
6. I have examined business records relating to the extensions of credit for mailing services performed by RDI for NSPAC from August 1988 through June 1991. In my opinion, the mailings from August 1988 through June 1991 for NSPAC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to NSPAC for services provided conform to usual and normal Industry practice.
7. RDI has undertaken all reasonable efforts to collect the debt owed to it by NSPAC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by NSPAC.
8. The overall nature of the business relationship of RDI and RCC is neither unusual nor outside the norms of the Industry.

9. No provisions found in the contracts I examined between RDI and RCC are outside normal Industry practice.
10. I have examined business records relating to the extensions of credit for mailing services performed by RDI for RCC from February 1990 through June 1992. In my opinion, the mailings from February 1990 through June 1992 for RCC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to RCC for services provided conform to usual and normal Industry practice.
11. RDI has undertaken all reasonable efforts to collect the debt owed to it by RCC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by RCC.



Richard F. Norman

Subscribed and sworn to before me this 10<sup>th</sup> day of September, 1996.



Notary Public

My Commission Expires: 11-30-99

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AFFIDAVIT

Leif Noren, being first duly sworn, deposes and says:

1. My address at Creative Response Concepts is 1150 South Washington Street, Alexandria, Virginia, 22314
2. I am currently the Chairman of Creative Response Concepts, where I have worked since 1987. I provide direct marketing consultation as well as public relations assistance for non-profit and for-profit companies. From 1980 to 1987 I served as the Treasurer, Executive Director, and was on the Board of Directors, of the National Conservative Political Action Committee. I was responsible for overseeing direct marketing campaign, reviewing direct mail contracts, meeting with different direct mail agencies, and as Treasurer, reviewing debts. I have a B.S. in accounting from Virginia Tech University.
3. I have examined the business and financial records relating to the services provided by Response Dynamics, Inc. and its associated companies ("RDI") to the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC").
4. The overall nature of the business relationship of RDI and NSPAC is neither unusual nor outside the norms of the direct marketing industry ("Industry").
5. No provisions found in the contracts I examined between RDI and NSPAC are outside normal Industry practice.
6. I have examined business records relating to the extensions of credit for mailing services performed by RDI for NSPAC from August 1988 through June 1991. In my opinion, the mailings from August 1988 through June 1991 for NSPAC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to NSPAC for services provided conform to usual and normal Industry practice.
7. The overall nature of the business relationship of RDI and RCC is neither unusual nor outside the norms of the Industry.
8. No provisions found in the contracts I examined between RDI and RCC are outside normal Industry practice.

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9. I have examined business records relating to the extensions of credit for mailing services performed by RDI for RCC from February 1990 through June 1992. In my opinion, the mailings from February 1990 through June 1992 for RCC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to RCC for services provided conform to usual and normal Industry practice.

  
Leif Noren

Subscribed and sworn to before me this 10<sup>th</sup> day of September, 1996.

  
Notary Public

My Commission Expires: 9/30/97

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## APPENDIX B

### ***\*RDI'S INITIAL EXTENSION OF CREDIT TO NSPAC AND RCC CONFORMED TO INDUSTRY STANDARDS:***

- Q. Is it a usual practice in the industry to extend credit to political committees?
- A. Among political . . . those firms that specialize in political fund raising, it is.<sup>1</sup>
- Q. Is it a usual practice in the industry to extend credit to political committees?
- A. It is less usual these days. It is . . . it is not totally unusual.<sup>2</sup>

### ***\*RDI'S ATTEMPTS TO REDUCE THE POLITICAL COMMITTEES' DEBTS THROUGH MAILINGS TO HOUSE LISTS, CONFORMED WITH INDUSTRY STANDARDS:***

- Q. Okay. In an instance when your company has extended credit, what does your company do when a mailing for a client results in a loss of income for the company?
- A. As a general rule . . . you take that immediate loss, and the subsequent mailings begin to -- to pay it back . . . . [T]here's not a lot of remedy in most political committees, because there isn't any assets.<sup>3</sup>
- Q. Okay. So, I guess what I need to know, then, is at what point -- maybe I've asked this, but at what point would you determine, then, if the invoices aren't being paid?
- A. We would not allow it to get too far into debt. That . . . is not something that can be precisely answered, you know, that it would be "X" number of months at -- while I'm sitting here today, thinking --

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<sup>1</sup> Craver Deposition at 41.

<sup>2</sup> Stone Deposition at 75-76.

<sup>3</sup> Craver Deposition at 43 (emphasis added).

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I'm trying to think. We have a standard.... But if the client -- I'm presuming, in saying this, too, that they have no house file. If they've come in with no house file, to extend it much past a year to a year and a half tops, it would really be fiduciary irresponsibility.

If they have a house file and you have another means for recovering costs, then -- and the client has agreed to make the investment and continuing to find a way to position, then it makes sense.

If they have a track record and they have a house file, that's a whole different can of worms, because that means at some point they have made it work.

Q. Okay. So if they did have a house file, then how much farther out would you be willing --

A. Well, then you would go to the 18 months . . .

Q. Okay.

A. . . . you know, maybe even two years, depending on the ... if it's a huge house file, maybe.<sup>4</sup>

Q. . . . [W]hen your company has extended credit to a client, what does your company do when . . . mailings from a client begin to result in a loss of income to the company?

A. Okay. We usually stop prospecting and start doing debt reduction in house files.

Q. Okay. And is that what's usually done in the industry when mailings start to result in a loss?

A. By the legitimate, credible agencies, yes . . . by the better agencies.<sup>5</sup>

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<sup>4</sup> Stone Deposition at 39-43.

<sup>5</sup> Stone Deposition at 77.

**\*RDI'S EVENTUAL DECISION TO DISCONTINUE MAILINGS ON BEHALF OF  
NSPAC AND RCC CONFORMED TO INDUSTRY STANDARDS:**

Q. Okay. What factors do you usually consider in determining when to discontinue mailings on behalf of a client?

A. When it appears that the mailings will not generate sufficient future income for the client . . . If it's an established political committee that's going to be around for a long time, you can continue taking a loss on part of its program, because that loss will either convert to profit down the line . . . the best example is the acquisition of new members or donors for a political committee. In year one you can sustain the loss because you have the new donor. Year two, you get the money back. Year three, you make a profit.

So if you view that over a three-year period, it is a defensible and wise, in fact, investment decision.

Q. With respect to political committees and the question of when you discontinue mailings, is there any . . . specific time frame that you might say, like, well, after three mailings that were unsuccessful, we would stop?

You know, if it's in the second year and we've already . . . I mean, is there any sort of generally formula type . . .

A. It's difficult to . . . to come up with . . . to state a general . . . a general rule. It depends . . . the answer depends on what the mailings are intended to do. If the . . . if a mailing is intended to acquire new donors or new members at a certain rate and a certain cost, if it doesn't work, you stop it then.

If it . . . if it is intended to make money from the . . . from the outset and it doesn't, you would stop it then. In fund raising, each type of mailing has a -- a set of criteria that is applied to it that determine whether you continue or not continue.

Q. . . . [H]ow would [recovery of debt from unsuccessful mailings] be pursued?

- 9 6 0 4 3 7 7 1 7 2 9
- A. It would be pursued under the contract by the . . . rental of . . . the mailing list. By . . . income received from future . . . mailings. . . . But if there . . . are no assets and everything . . . ethical has been exhausted, then that's it. . . . [We] would simply write it off as a . . . bad debt.<sup>6</sup>

***\*RDI'S APPLICATION OF LIST RENTAL INCOME TO SET-OFF THE  
POLITICAL COMMITTEES' DEBTS CONFORMED TO INDUSTRY  
STANDARDS:***

- Q. Okay. If your company co-owned the client's mailing list, would you apply the income received as a result of the co-ownership to the client's outstanding debt?
- A. We do.
- Q. Okay. And even if that's not provided for in the contract . . .
- A. Yes.
- Q. . . . would you do that?
- A. Yes.
- Q. And is that usually done in the industry that way?
- A. I doubt it, but I don't know for certain.<sup>7</sup>
- Q. . . . Is it a usual and normal practice for . . . a company to offset a client's debt by actual rental income from the mailing lists?
- A. It is our usual practice. I don't know whether it's the industry's usual practice.<sup>8</sup>

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<sup>6</sup> Craver Deposition at 44-49.

<sup>7</sup> Craver Deposition at 51.

<sup>8</sup> Craver Deposition at 60-61.

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Q. And if an agency is front-ending the mailing program, what all is considered income to the company . . . ?

A. . . . If the . . . contract provides for the ownership or the use of the . . . mailing lists for rental purposes, then the rent income from that mailing list would be income to the . . . to the agency.

If the contract permits the . . . agency to use data from the campaign and it can use that data to enhance its other mailing lists or enhance its other work, that is . . . income to the . . . company.

Q. For companies that have co-owners and get all the money that you just described from rental of the mailing lists and the other things that you just described, do they normally calculate the fact that they're going to receive this money in setting their profit margins? Do you know?

A. They should. . . .

Q. And is that usually done in the direct mail industry?

A. Yes. . . . I think the general rule is, the more established the political committee, the less general or less usual it would be for a contractor to have a beneficial interest in those mailing lists.<sup>9</sup>

Q. Okay. So what, actually, are direct mail companies gaining, themselves, from co-owning a list?

A. Lots of money . . . [I]t's extremely lucrative for the agency. Because in a list-rental situation, the agency makes 80 percent profit every time that name is rented.

That's a nice profit margin, wouldn't you say, 80 percent? A little higher than the normal profit margin.<sup>10</sup>

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<sup>9</sup> Craver Deposition at 35-38.

<sup>10</sup> Stone Deposition at 69.

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# **What Your Organization Needs to Know About Direct Mail Fundraising**



Association of Direct Response  
Fundraising Counsel  
1501 Broadway, Suite 610  
New York, New York 10036

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## WHAT YOUR ORGANIZATION NEEDS TO KNOW ABOUT DIRECT MAIL FUNDRAISING

Every year, individual Americans donate tens of billions of dollars to non-profit organizations.

Some write small checks for ten or fifteen dollars. Others make contributions for many thousands of dollars. But the odds are that even such vastly different donors have something surprising in common: a first gift that was made when they received a letter asking for financial support. Because 80 percent of the gifts Americans give each year start out just that way. With a letter.

For organizations — even new ones which have not yet had the chance to establish their reputations — that letter represents the opportunity to begin developing a dependable source of funding. And for donors, it offers a way to belong ... and to help those less fortunate.

For some donors, that letter may have been a personal note from someone they knew at the organization. But for the vast majority of givers, even those who eventually become very large donors, that first letter was probably a direct mail letter like those you find in your own mailbox every day.

How those letters transform total strangers into the loyal friends whose generosity supports your organization is what direct mail is all about.

## WHAT IT IS AND HOW IT WORKS

Too often, organizations have unrealistic expectations when they undertake their first direct mail effort.

They tally the donations, figure in their costs and declare their verdict. If their mailing doesn't make a profit, doesn't make at least a one percent return (as they have always heard a mailing should), they conclude that direct mail just isn't for them.

In many cases, that decision has cost their organization all of the growth and money a properly managed campaign — even one they thought had "failed" — might have given them.

Their mistake was in looking at direct mail as a limited campaign — when they should have been looking at it as an *ongoing, long-term process of building a program*.

Properly executed, a direct mail program can provide your organization with loyal supporters, rapid growth and a consistent source of working capital.

Equally important, it can systematically identify the people capable of making the very large gifts and bequests on which so much of your group's future success depend.

Here's how it works.

## IS DIRECT MAIL FOR YOU?

Even though you may be ready and willing to begin a full-fledged program, there is a

critical question that must be answered before committing your organization's time, effort and money. That question is: Is my organization a good candidate for direct mail?

This has nothing to do with the worthiness of your cause. Many causes — no matter how important — simply don't tend to work well in the mail. Others may only work at a particular time in history, when current events and the public mood make the public most receptive to their mission.

To learn whether direct mail is likely to be right for your organization, you had best ask a direct mail professional. As a matter of fact, you would be better off asking the questions of at least three reputable firms.

If two out of three believe your organization to be mail viable, your chances of success are strong. But if two out of three (or all three) warn you away from direct mail, you should heed their wisdom — even over pressure from a well-intended board of directors.

Many non-profits are surprised when a consulting firm warns them away from the mail. After all, you may argue, if you are going to test the mail anyhow and someone is going to collect a fee — why not them? But consulting firms like successes as much as do clients. And most get their new clients by word-of-mouth.

So if the professionals advise you to forget about the mail, you are probably wasting your time by going in search of a fourth or fifth firm that will tell you what you want to hear.

## YOUR FIRST DIRECT MAIL EFFORT

Assuming that at least two firms believe you have a chance for success, you should now invite written proposals and choose among them.

Once a contract has been negotiated, evaluated and signed, your new consultant must do two things: translate your case for support into an effective direct mail appeal and learn whether there are enough potential donors out there to make a long-term program possible. And the only way to learn whether you have a sustainable market is to test a sufficient number of names (at least 3,000 to 5,000) on a sufficient number of lists (usually between 10 and 20). Test criteria differs depending on each set of circumstances.

If you do not have your own donor list to exchange, most of these first names will be rented from the mailing lists of organizations whose donors are similar to the people most likely to support your cause.

By seeing how well your package performs on a cross-section of these first test lists, an experienced professional can determine whether or not the "universe" of direct mail donors is likely to support your organization.

If so, a plan will be developed to "roll out" your mailing to larger and larger segments of the original mailing lists, while continuing to test your package against additional new lists.

It's important to remember that these first mailings should not be expected to earn net income. These are "prospect" or "acquisition" mailings — designed to acquire the most

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*donors possible in the shortest period of time, at the least possible net investment per new donor. As these prospects respond to your mailing and become donors, they are added to your organization's "house list" — where they become an ongoing source of donations.*

Occasionally, a prospect mailing will earn more money than it costs, but that should be considered an unexpected bonus. The goal of most not-for-profits is to "break even" on the mailing, spending a dollar for every dollar raised. Sometimes even more will be spent, but most experienced development officers are willing to subsidize manageable losses as long as the campaign is attracting quality donors.

That's because organizations experienced in raising funds by mail understand that a donor's worth must be measured over time. The longer an organization remains in the mail, as a rule, the more cost efficient the process becomes, and the increasing amount of net money raised in the long run more than justifies a reasonable investment made to acquire a large base of donors.

That donor base — if it is managed properly — can become more than just the foundation of your direct mail effort; it can be the foundation of your overall fundraising program, as well.

Proper management of the donor base means systematically identifying each donor's giving potential — and then moving each one to that point as quickly as possible. Most donors can be upgraded to higher giving levels. Some donors can be cultivated into "multiple donors" — ones who give more than two or three times a year. And some can even

become major donors, who can then be graduated out of the direct mail program and into a more personalized program, where the contacts are made by personal letters, phone calls or face-to-face meetings.

The larger your organization's initial base of quality smaller donors, the faster this process works to develop the major givers you want. And because direct mail can find and acquire that initial base of donors faster than any other kind of solicitation, your entire fundraising cycle will be as cost-effective as possible.

#### IN THE MAIL: DEVELOPING YOUR DONORS

A sophisticated prospect program will always include the testing of new themes and packages against the most successful current package (called the "control"). And when, usually after a series of tries, a new acquisition package beats out the old one, it becomes the "control." This ensures the continuing addition of fresh, enthusiastic donors to your house list.

But the donors already on that house list must also be kept informed and enthused — because it is from *their continued donations* that you will begin to earn substantial net income. So the pros will use many different approaches to keep those donors educated, interested and contributing.

**Membership Renewals** If your donors are dues-paying members, your consultant will develop a series of between three and seven renewal notices. The first of these is usually mailed two months prior to expiration date, the second one month prior and the third both during the month of expiration and then for

several months afterward until the member renews. The conventional wisdom is that between 40 and 60 percent of new donors will renew the second year. Once that second gift is made, annual renewal rates should increase to between 60 and 80 percent.

But since you can't sustain a membership organization on net income from one-time annual gifts, it's important to get your renewed donors in the habit of contributing in excess of dues. And that's where the next phase comes in.

**Special Appeals** Those organizations that balk at the prospect of asking their members to give more than once or twice a year are not realizing their potential income. And because their more sophisticated competitors are asking — their members are giving (and giving several times a year) to rival organizations.

Income from a series of special appeals (usually between four and ten per year) can raise half as much as dues income and, in some cases, can very nearly equal income from dues.

The most effective special appeals are those that ask members to support a particular program. The least effective special appeals are those that ask the member to contribute (above and beyond dues) simply because the agency needs the funds.

**Donor Appeals** For those organizations for whom membership is not appropriate or desirable, renewals will take the form of a series of donor appeals. Most successful mailers find that a plan including four to 12 appeals each year is most effective.

Donor appeals not only raise net income for your organization, but provide the opportunity to tell your donors about new programs, update them on old programs, and report on how their dollars are being spent. A well-crafted donor mailing campaign can employ many different techniques and package formats to keep the appeals fresh and interesting.

In addition to regular member/donor appeals, some organizations have found other ways to raise funds from their givers through direct mail.

**Pledge Programs** Through monthly giving, donors commit to a specific amount each month and make their gifts in response to simple invoices.

Summaries of their past support and longevity with the organization, special "insider information" and other reinforcement techniques, including plaques, premiums and invitations to special events, help create a tremendous bond with the sustaining donors — and help in future upgrading of their contribution levels.

The most successful pledge programs usually take the form of a "club" or some other specially named program that reinforces the member's feeling that she belongs to an elite and very special group.

**Cultivation Pieces** These mailings are not intended to attract *immediate* gifts, but to increase future ones. Like many of the techniques used in sustainer packages, cultivation mailings bond the donor to the organization. News clippings or newsletters showing how donors' gifts have been put to use are typical



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techniques. Used properly, they greatly increase the donors' feelings of effective involvement ... as well as their responses to future fundraising requests.

#### THE ULTIMATE REWARD

The payoff of a well-managed direct mail campaign is more than just a healthy cash flow. Through cultivation of your direct mail donors, you uncover a number who will become actively involved, who may become volunteers and even board members and who will make major financial commitments to your organization.

For such donors are not "out there," as too many organizations believe. They are largely in your own files. But they must be nurtured through a well-managed program from the day they write their first small check.

Best of all (and this is what Development Directors should always bear in mind), your donor base will enable you to institute a healthy bequest program and raise more money from other sources including foundations and corporations.

A broad base of support says to the world that there is a real need for your services. And there is virtually nothing more compelling to a potential major donor than that.

#### THE ASSOCIATION OF DIRECT RESPONSE FUNDRAISING COUNSEL

ADRFCo was formed in 1986 to serve and represent firms that specialize in consulting with non-profit organizations about their direct response fundraising campaigns. ADRFCo was formed for three purposes:

- 1) To create the industry's first set of comprehensive ethical standards.
- 2) To represent the membership's needs before regulatory agencies.
- 3) To educate non-profit organizations and the general public about the use of direct response fundraising.

ADRFCo members pledge compliance with the Rules of Business Ethics and Practices, ensuring the highest standards of ethics in dealings with non-profits, regulators and the public.

Membership list is available by writing to: Association of Direct Response Fundraising Counsel, 1501 Broadway, Ste. 610, New York, New York 10036.



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

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September 12, 1996

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

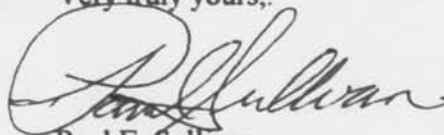
Attn: Tracy L. Ligon, Esq.

re: MUR 3638  
Republican Challengers' Committee

Dear Ms. Ligon:

Enclosed please find RCC's probable cause brief for the above-referenced matter.

Very truly yours,



Paul E. Sullivan  
Counsel for Respondent

cc: Chairman Elliott  
Vice-Chairman McGarry  
Commissioner Aikens  
Commissioner McDonald  
Commissioner Thomas

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**-BEFORE THE FEDERAL ELECTION COMMISSION**

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GENERAL COUNSEL  
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**In the matter of:**

**REPUBLICAN CHALLENGER'S  
COMMITTEE  
and Robert Miller, Jr**

MUR 3638

**RESPONSE TO GENERAL  
COUNSEL'S PROBABLE  
CAUSE BRIEF**

**Introduction**

This matter was generated by a complaint filed with the Federal Election Commission ("FEC" or "Commission") by the Democratic National Committee. By a letter dated October 9, 1992, the Commission provided Republican Challenger's Committee ("RCC") with a copy of the complaint. On December 10, 1992, RCC filed its RTB Response Brief with the Commission. By a letter dated October 3, 1994, the Commission provided notice of an RTB finding and issued a subpoena for production of documents and answers to interrogatories propounded pertaining to this matter. Documents were filed with the Commission by letter dated December 9, 1994. By a letter dated August 2, 1996, RCC received the General Counsel's probable cause brief and this document is filed as a response to that brief in accordance with 2 U.S.C. §437g(a)(3).

In essence, the General Counsel is making a recommendation that the Commission find probable cause that RCC received an improper extension of credit amounting to three hundred fifteen thousand, seven hundred nineteen dollars (\$315,719.00)<sup>1</sup> in violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act.") The genesis for this accusation was an November 1989 direct mail contract which RCC entered into with Response Dynamics, Inc. ("RDI")

<sup>1</sup> As will be noted below, counsel miscalculated the aggregate and the month to month change in the RCC debt. Total debt was miscalculated by one thousand four hundred eighty-six dollars (\$1,486.00)

and a host of its vertically-integrated subsidiaries providing support service for RDI's direct mail business. From the time that the November 1989 contract was signed up to June 1992, RCC raised a total of approximately four hundred sixteen thousand two hundred eight dollars (\$416,208.00) through its direct mail contract with RDI. The direct mail fundraising ceased after June of 1992, at which time, RCC had an outstanding debt of ninety-six thousand five hundred thirteen dollars (\$96,513.00.) That debt continues to be outstanding as of this date.

The theory proffered by the General Counsel's office is that, "... the extensions of credit made by the companies to RCC subsequent to June 1990, which totals three hundred fifteen thousand, seven hundred nineteen dollars (\$315,719.00) were made outside the ordinary course of business in violation of §441b by RCC." (Footnote omitted.)<sup>2</sup>

After an investigation which has lasted nearly four (4) years, including responses to interrogatories and production of thousands of documents and the testimony of "expert witnesses," the General Counsel offers the Commission very little evidence upon which to base a probable cause finding. The elementary findings of fact which are central to support its allegations of specific violations of the Act are presented in a conclusionary fashion with little cross-reference to any of the materials presented during discovery.

The OGC Brief narrows its case down to the issue of whether or not the extension of credit<sup>3</sup> by RDI constituted usual and normal business practices in the industry in which the RDI companies

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<sup>2</sup> General Counsel's Probable Cause Brief ("OGC Brief"), page 11.

<sup>3</sup> OGC Brief (at page 11) acknowledges that no improper credit was extended to RCC entering into a contract with RDI from November 1989 through June 1990; rather, they argue the improper extension of credit occurred from July 1990 (a date rather arbitrarily selected) through June 1992.

operate. The OGC Brief indicates that, in an effort to ascertain what constitutes usual and normal business practices, they conducted informal interviews and formal depositions with two individuals in the direct response industry<sup>4</sup>. The mere fact that the Counsel's office was compelled to seek expert testimony to provide a standard against which to measure the words of the regulations and the single advisory opinion (Advisory Opinion 1979-36) to which it cites, evidences that it is a rather vague legal standard, not easily understood even by the Counsel. Yet the Commission is being asked to find that the members of the regulated were somehow expected to have a greater insight to that standard than did the Counsel's office.

The Respondents will demonstrate below that the contract entered into in 1989 with RDI met the statutory and regulatory standards of the time, (a point not disputed in the OGC Brief) and the ongoing extension of credit continually met those regulatory standards. Second, the expert witnesses to whom the OGC Brief so heavily relies consisted of (1) a witness who was admittedly prejudiced against RDI, and (2) witnesses who offered different opinions on material issues pertaining to what constitutes the usual and normal business practice in the industry thereby substantiating that those standards are extremely broad, and thus ones which include the RDI contract provisions in question.

The General Counsel has the burden to offer to the Commission clear and credible evidence, especially in a case of this magnitude, upon which to make a finding of probable cause. Due to the

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<sup>4</sup> OGC Brief, page 7. Respondents have been provided with copies of the transcripts of the deposition of Ann Stone and Roger M. Craver, which are referenced in the OGC Brief. Respondents were not notified regarding with whom the "informal interviews" were conducted. I do note for the Commission's consideration that it is rather odd that such expert witnesses would be deposed and yet the two principals of RDI were not deposed to enable them to respond to the testimony pertaining to what they considered to be the "industry standard" for the "usual and normal business practices in the industry." It would seem that that is the only true fashion in which the Commission would have received an accurate basis for comparison between the expert witnesses and the basis upon which RDI drafted its contract in 1986.

fact that Counsel has failed substantially in its legal analysis and in its evidentiary production to substantiate that extensions of credit did meet the regulatory and industry standards, Respondent requests that the Commission make a finding of no probable cause and close the file in this matter.

### Analysis and Legal Arguments

1. The contract which RCC entered into in November 1989 complied with the regulatory requirements of the FECA and the formal advice provided by the FEC which was available at the time the contract was executed.

The OGC Brief questions and in fact rejects a statement made in the RCC RTB Brief, that the applicable regulations for review of the 1989 contract should be the regulations which were in effect at that time; not those enacted in 1990. Respondents cited to those regulations as a factual matter and one of basic legal construction; at the time the RDI contract was entered into, the regulations which were in effect must govern the determination as to whether or not that contract was in compliance with those regulations. Counsel disputes this basic tenet and rather cavalierly states,

*"... the regulated community was provided with adequate notice that the ordinary course of business in the vendor's industry was a factor that the Commission would consider in determining the legality of extension of credit. Specifically, in Advisory Opinion 1979-36, which was issued on July 27, 1979, the Commission addressed precisely the type of extension of credit involved in this matter and conditioned its approval of the proposed arrangement upon, inter alia, the arrangement's conformance to "normal industry practice." Therefore, we reject RCC's implied argument that conformance to the Corporation's own business practice is the controlling inquiry in determining the legality of extensions of credit, and herein we apply, inter alia, the "normal industry practice" standard with respect to all of the activity at issue.<sup>5</sup> (Emphasis added.)*



Respondent was not making an "implied argument"; it was not an argument at all, but rather a direct quotation of the applicable regulations. The plain language of the regulations is the standard to which the Commission must be held when adjudicating compliance matters.<sup>6</sup> There is no need to look behind the language of the regulations for some new and subtle interpretation when the regulations are clear from a plain reading of the words.<sup>7</sup> Respondent does not dispute the language of the Advisory Opinion cited above. However, to state that the "normal industry practice" standard is the one that the Commission intends to apply in this case is *factually* not a standard captured in the plain language of the regulations. To summarily dismiss the 1989<sup>8</sup> regulation, as OGC's Brief attempts to do, the is flat wrong. Second, if, as Counsel contends, there is no substantive distinction between the 1989 and 1990 regulations, they should comply with accepted rules of construction and cite to the 1989 provisions, not the "three-prong" approach found in the 1990 amended regulations at 11 C.F.R. §116.3.

The distinction is a material and significant one. The 1989 regulations state that a corporation may extend credit, "...provided that the credit is extended in the ordinary course of the *corporation's business* and the terms are substantially similar to the extensions of credit to non-political debtors which are of similar risk and size of obligation." (Emphasis added.)<sup>9</sup>

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<sup>6</sup> US v. Winstar Corp., 116 S. Ct. 2432 (1996)

<sup>7</sup> Gardebring v. Jenkins, 485 U.S. 415 (1988); Commissioner of Internal Revenue v. Schleier, 115 S. Ct. 2159 (1995)

<sup>8</sup> For reference purposes the §116.3 regulations, effective October 3, 1990 will be referred herein as the "1990" regulations. The §114.10 regulations cited by Respondent will be referenced as the "1989" regulations.

<sup>9</sup> 11 C.F.R. §114.10(a), (1989. )

In fact, in AO 1979-36<sup>10</sup> the Commission merely recited the two-prong standard from the regulations in effect up to 1987.

"The Commission concludes that if, in fact, (1) the proposed financial agreement with its provisions for expenses to be initially incurred by Working Names, and for limited liability on behalf of the Committee if the direct mail is "unsuccessful," is of a type which is normal industry practice and contains the type of credit which is extended *in the ordinary course of Working Names business* with terms which are substantially similar to those given to non-political, as well as political, debtors of similar risk and size of obligation, and if (2) the cost charged the Committee are at least the normal charge for services of that type, then the amounts expended by Working Names will not be considered to be campaign contributions." (Emphasis added.)

Whereas the language of the 1989 regulations looks solely to the ordinary course of the corporation's business which is extending the credit, the reference made to "normal industry practice" adds an additional criteria beyond the parameters of the regulation. It directs that the standard to look beyond that of the *corporation extending the credit* and instead requires the credit terms to be assessed based on the *entire "industry."*

Counsel also contends that this additional and much broader standard of review be applied in this case based upon a rather subtle reference contained in a 1979 Advisory Opinion. Counsel points to no provision in the statutes, the regulations in place at that time, no citation to the regulation's explanation and justification, policy positions of the Commission, or even a second Advisory Opinion to which this new standard is also included. Despite that, the Counsel argues that, by virtue of that one phrase, "...the regulated community was provided adequate notice" of the Commission's intent to employ this new criteria<sup>11</sup>.

<sup>10</sup> Fed. Elec. Camp. Fin. Guide, (CCH) ¶5421.

<sup>11</sup> OGC Brief, page 5.

Counsel does not dispute this new criteria was not in the 1989 regulations. This new standard to which the Counsel claims will be the "standard with respect to all the activity at issue"<sup>12</sup> in this MUR, first surfaced in the newly-created section 116 of the regulations which became effective in 1990. The three-prong provision found in the amended 1990 regulations which the Commission will consider in determining whether credit is extended in the ordinary course of business, sets forth the first two criteria focusing solely on the vendor's policy for credit extensions. Specifically, whether the vendor followed *its* established procedures and *its* past practices in approving the extension of credit, and (2) whether the *vendor* received prompt payments in full if it previously extended credit to the same candidate or political committee. These first two elements reflect the entire standard of the 1989 regulations. The third prong of the 1990 revised regulations was not set forth in the 1989 regulations; it requires one to also look beyond the internal normal course of business of the vendor and focuses on the "usual and normal practice in the vendor's trade or industry." The Advisory Opinion process is in the Act merely to enable the Commission to apply the operative terms of the Act and *regulations* to a given fact pattern. It is not a vehicle to amend or expand the standards plainly set forth in the regulations<sup>13</sup>.

The distinction between the 1989 and the 1990 regulatory standards is not one which the Commission should lightly brush aside nor cavalierly impose upon Respondent's actions in this matter. OGC's Brief does not even attempt to argue that the RDI contract, and thereby the extension of credit, was in violation of either of the first two prongs. Rather, it skips immediately to a

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<sup>12</sup> OGC Brief, page 6.

<sup>13</sup> See 2 U.S.C. §437f.

discussion of the third prong of the Commission's regulations<sup>14</sup>. If the Commission determines that the standard articulated in the third prong was not an enforceable provision at the time of the November 1989 contract or up through October 27, 1990, then the entire case presented by the OGC must fail. As is shown below, the expert testimony, and the exclusive theory presented to the Commission by the Counsel is that the contract between RDI and RCC and the ongoing extension of credit failed to meet the "normal industry practice" -- the third prong of the 1990 regulations in question.

It is clear that RDI and RCC complied with the 1989 regulations and in fact, with §116.3 of the revised credit regulations. Specifically, RDI followed its established procedures and past practices in approving the extension of credit. This is evidenced by the fact that RDI tendered and RCC executed the standard vendor/client contract<sup>15</sup>. As to the second prong, which would require that RDI received prompt payment in full for previously extended credit to the same political committee, i.e., RCC, is not applicable since there is no evidence proffered by Counsel that RDI had a prior contract with RCC nor Robert Miller, Jr., the treasurer, nor Floyd Brown, the Chairman.<sup>16</sup>

For the reasons stated above, it is the position of Respondent that it fully and accurately complied with the applicable regulations pertaining to the extension of credit.

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<sup>14</sup> OGC Brief, page 6 and 7. Also, the very reference here to the third prong of the Commission's regulations indicates that the Counsel's office is not relying upon the verbiage of the 1989 regulations but rather insists on applying the regulatory standards of §116.3 enacted June 27, 1990, and effective October 3, 1990.

<sup>15</sup> See OGC Brief, Page 2.

<sup>16</sup> As will be discussed below, OGC Brief has misrepresented the relationship Mr. Brown had with RCC, another Respondent in this MUR. Notwithstanding that fact, the RCC and NSPAC Agreements with RDI were both the standard RDI Agreement (See OGC Probable Cause Brief for NSPAC at p. 2) thereby evidencing compliance by RDI with this second prong of the standard.

2. The expert witnesses, which OGC cites as the cornerstone of its case, must be disregarded because of the gross prejudice by one witness toward RDI and the testimony of the two witnesses is sufficiently different on material issues so as to evidence that there is no consensus regarding "usual industry standards."

Respondents are uncertain as to how the Counsel's office came to select the two expert witnesses so heavily relied upon in the OGC Brief. However, the testimony of Ann E. W. Stone ("Stone") should be summarily disregarded by the Commission and should have been disregarded by the Counsel in preparation of his brief to the Commission.

First, Counsel's office failed to qualify either witness as to their objectivity in this matter. At that point in Ms. Stone's deposition when she indicated that she knew of RDI, Counsel should have explored the basis for the knowledge and whether there was any prejudice on behalf of the witness toward RDI based upon past activities, potential conflicts amongst clients, litigation, etc. Such qualification was not made at any time by Counsel during the deposition. Failure to explore this potential prejudice became material to the testimony of the witness when Stone testified that she would not join an association, specifically Direct Response Fund-Raising Council, merely because that association permitted RDI to be a member. (Stone Deposition, page 140-1.) The fact that an individual such as Ms. Stone who is a recognized leader in the area of direct response by her own admission and by the Counsel by virtue of selecting her as an expert witness, would refuse to join a leading direct response association merely because that association permitted RDI to be a member is such a blatant indication of prejudice toward RDI that Ms. Stone's testimony pertaining to RDI's compliance with any ethical, let alone "industry standard procedures" must be completely rejected by the Commission. For the Counsel to even submit such testimony to the Commission as evidence of an objective expert witness must be severely questioned by the Commission.

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In addition, this apparently is not the first time that Ms. Stone had reviewed or been privy to the terms of an RDI client contract. In response to Counsel's question during the deposition, pertaining to the liquidated damages clause in the RDI Contract, specifically, the payment of twenty-five thousand dollars (\$25,000.00) in the event of a premature termination, Ms. Stone stated: "I have seen this in *their* contracts before and only in *their* contracts." (Stone Dep.: page 126, line 8.) Counsel failed to inquire of the witness as to how she came to previously review such contracts, the contents in which those reviews were undertaken, and how often she encountered or had the opportunity to review RDI contracts. This is especially material in view of Ms. Stone's earlier testimony that she considered herself the "agency doctor" whereby clients who were "broken" by their former direct mail firm came to her for "healing" (Stone Dep.: page 16-17.) One must ask how much of her client base consists of former RDI clients? The failure by Counsel to pursue the potential prejudice and thereby qualify the witness as an expert, able to render an objective opinion, mandates that the Commission not place any credence in the opinions expressed by Ms. Stone. These are matters which clearly would have surfaced had Respondent had the opportunity to cross-examine the expert witness. Respondent has little doubt that Ms. Stone's credibility to express an objective opinion pertaining to RDI would have been completely impeached, were such cross-examination permitted.

3. The two expert witnesses express completely different opinions pertaining to substantial and material industry activities so as to demonstrate Respondents' very point that the industry standards are extremely broad and the RDI contract fits within those industry standard parameters.

Notwithstanding the apparent prejudice of Ms. Stone, a review of the depositions of Ms. Stone and Mr. Craver do demonstrate one point which Counsel's brief fails to acknowledge; the

witnesses express diametrically opposing views on material issues pertaining to the "industry standard" as they relate to the RDI contract. Several of these major discrepancies are detailed below.

(A) Contract Termination and Duration: Stone testifies that her contracts are generally open-ended, whereas Craver testifies his contracts are for a specific time period. In addition, Stone testifies thirty to sixty days, perhaps ninety, is the usual termination timeframe, whereas Craver testifies it is usually one hundred twenty and maybe up to one year.

Q: Okay. What factors does your company normally consider in determining the duration of a contract?

A: Our contracts generally are open-ended. They do not have a duration, but they have the ability to cancel on us very quickly.

Some contracts are 30-day cancellation. Some are 60. The most I think we have are 90, and that's unusual . . . I think 90 usually, or even back to 30 or 60, because I believe the client should always have the right to walk away from us. (Stone Dep.: pages 43-44.)

Compared to the testimony of Mr. Craver:

Q: So, usually direct mail contracts include some provision for the duration of the contract, and usually what is --

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A: Usually it's a fixed term. It may be the entire term of a campaign, a two-year term or an eighteen month term...

Q: And is that the same with respect to political committees?

A: Generally.

Q: Okay.

And you're saying that the short 60-day termination period --

A: Is unusual.

Q: Is unusual? What is usual?

A: What is usual is 120 days, 90 days. Sometimes it goes for a year with written notice. Otherwise it extends automatically for another term.

Q: Okay. (Craver Dep: pp. 29-30)

(B) Co-Ownership of List: Ms. Stone contends it is not usual to co-own a list, whereas Mr. Craver disagrees.

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Q: You mentioned that your company doesn't co-own mailing lists.

A: Right.

Q: Is it a (sic) usual and normal practice in the industry for direct mail companies to co-own mailing lists?

A: I'm proud to say that I think our -- our agency led the way in making it less usual.

And, in fact, today it has now become more usual, because clients have become more educated and generally do not allow co-ownership.

Q: Okay. And when would you say that it --

A: Again, about the last ten years. There, again, are some clients that are willing to give that up. And sometimes it is a trade-off for other things the agency can do.

But clients have come to understand their list is usually their greatest asset, and it can be abused if they allow co-ownership.

Q: Okay.

A: And most of those agencies in town that are considered the best don't co-own. (Stone Dep: pp. 66-67)

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Contrast that with Mr. Craver, who testified as follows:

A: ... In political fundraising there are a variety of agreements on the ownership of data and names. Most agreements provide for shared ownership. Some provide for ownership by the contractor. The -- the protection of data and the -- and its use solely by the client is more rare than common in the political direct mail business.

Q: Okay.

So co-ownership, then, of the mailing list by the agency and the client is not usual in a direct mail industry?

A: No. The co-ownership is -- is -- is not unusual -- I don't know whether it's usual. It's not unusual.

Q: Okay. (Craver Dep: page 26)

(C) Use of Co-Ownership Fees to reduce client's outstanding debt: Ms. Stone testifies income from list is not applied to client's outstanding debt. However, Mr. Craver testifies that such proceeds are routinely used for reducing client's debt.

Q: Okay. Now, what would your company do in the instance when the -- okay. Well, I'm sorry. In an effort to reduce the debt of a client --

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A: Mm-hmm.

Q: -- Has your company ever reduced your charges, amended the contract to reduce the charges

A: No.

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Q: So then, in your opinion, its unusual in the direct mail industry to reduce your charges in an effort to reduce --

A: By a legitimate --

Q: -- client --

A: -- by legitimate business people for a political organization, yes and I would think it would be a violation of the law, too. (Stone Dep: pages 81-82)

Mr. Craver testifies to the contrary:

Q: Okay.

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If your company co-owned the client's mailing list, would you apply income received as a result of the co-ownership to the client's outstanding debt?

A: We do.

Q: Okay. And even if that's not provided for in the contract --

A: Yes.

Q: -- would you do that?

A: Yes. (Craver Dep.: Page 51)

Mr. Craver later testifies similarly:

Q: Okay.

Now, you may have covered this in the answers that you have given previously, but I just want to be sure I everything, so I'm just going to go through a few more questions; and they relate to a company's co-owning mailing lists with their clients.

Okay.

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Is it a usual and normal practice for such a company to offset a client's debt by actual rental income from the mailing lists?

A: It is our usual practice. I don't know whether it's the industry's usual practice. (Craver Dep.: pages 60-61.)

(D) Payment of penalties or liquidated damages: Ms. Stone testifies that liquidated damages are unusual, whereas Mr. Craver testifies that such financial penalties are typical.

A: ... 4(f) -- I have seen this in their contracts before and only their contracts, where their -- this is a penalty clause, where they have to pay liquidated if they try to cancel the contract prior to the expiration date. This is part of the indentured servitude thing, buying their way of freedom.

I believe I'm correct in saying they're the only ones I've ever heard that have done this -- \$25,000 is actually less than I've seen in some of their contracts. I've seen them charge clients even more.

And you can see if they have had paid this \$25,000 that that's disincentive for them to ever try to terminate before the expiration date. But that's unusual. That is an unusual thing. (Stone Dep: pages 126-127.)

Mr. Craver testifies that such financial penalties in the termination of a contract are not unusual:

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A: . . . Generally, in political fundraising, the contracts are for fixed terms. Often fairly onerous terms. That, if it is terminated the list reverts to the contractor. If it is terminated, there are certain financial penalties. The -- concept of terminating it and being paid only for this -- for the services incurred to the point of termination is -- is not that typical. (Craver Dep: pages 28-29.)

(E) Reduction in Price of Mailing List: Ms. Stone testifies that it is unusual to reduce the compensation for fundraising packages, whereas Mr. Craver disagrees:

Q: Now, if the company were to, in 1989, amend this contract to reduce the compensation of \$50 per 1,000 fundraising packages --

A: Mm-hmm.

Q: -- To \$35 per 1,000 fundraising packages, would that be unusual, normal charge in this scheme of this contract in 1989?

A: In the middle of the contract, no, that would not be, not when you have specific terms set out.

Something -- if they decided to terminate and re-negotiate a contract, that's a whole different can of worms. (Stone Dep.: page 136.)

Mr. Craver testifies as follows:

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Q: Okay.

Has your company ever, in an effort, to reduce the debt of a client, amended the contract reducing the fee?

A: Yes.

Q: -- for services?

A: Yes. (Craver Dep.: page 49.)

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Respondents submit that these are merely highlights of substantial and material differences between the expert opinions proffered by the Counsel's brief. Though not all of the discrepancies referenced above pertain to the RCC contract, it raises a fundamental credibility problem for the Counsel to point to either expert witness as being capable of knowing what is the "industry standard" for any of the matters for which they dispute in the RDI/RCC contract. Reviewing such diversity of opinion by Counsel's own expert witness, the Commission must conclude the industry standards for direct mail are very broad and, as to those matters pertaining to the RDI/RCC contract, the testimony evidences that the contract did come within the industry standards.

6. OGC Brief concedes that the initial extension of credit by RDI to RCC and the execution of the contract was not in violation of the FECA.



The OGC Brief is rather vague and inconclusive pertaining to its final resolution of whether the RDI contract with RCC was in compliance with the usual and normal business practices in the industry. Though as noted above, Respondents do not agree that the "industry" is the standard against which the contract should be reviewed, the OGC Brief discusses, but does not conclude, that the initial extension of credit and the signing of the contract was in violation of the FECA. The brief states, "RCC further argues that the RDI/RCC contract should be judged by whether it was an arm's-length transaction at the time it was executed, not whether the contract resulted in a successful fundraising project."<sup>17</sup>

After questioning the Respondent's initial RTB argument that the contract should be judged by whether it was an arm's-length transaction at the time it was executed, Counsel states, "in the foregoing arguments (reference to the arm's-length transaction referenced above) the Respondents appear to focus only on the underlying argument between the company and RCC. However, in determining the legality of extensions of credit, it is necessary to examine whether the companies' continuous extensions of credit under the circumstances surrounding the RDI/RCC relationship conform to usual and normal industry practices."<sup>18</sup>

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<sup>17</sup> OGC Brief, page 6. It should also be noted that Respondent is uncertain as to the somewhat elusive standard that Counsel may be referencing in this statement when they state, "... not whether the contract resulted in a successful fundraising project." For the record, Respondent strongly disagrees with any position by OGC that a direct mail contract must be a successful fundraising project in order that the extension of contract be "within the normal industry practice" flies in the face of the Counsel's very argument and testimony of its expert witnesses. I would hope that this was nothing but a throwaway line, however, to criticize Respondent for tendering one argument rather than a discussion of whether it was a "successful fundraising project" creates nothing but confusion as to the standard to which the Counsel is attempting to establish against which to judge the RDI contract and the ongoing extension of credit. The "successful fundraising project" standard is not one which is testified to by either expert witness nor even alluded to in their testimony and for that matter, is not one which the balance of the OGC's brief appears to articulate.

<sup>18</sup> OGC Brief, page 6.

Counsel's Brief then goes on to explore testimony from the expert witnesses. The witnesses, by the Counsel's own admission, testify that the usual and normal practice in the industry is to extend credit to political committees, adding certain caveats that it applies to PACs of long-standing or *to keep a tight rein on how money is spent in the early days of a new political committee*. Counsel's Brief continues the a comparison of the expert testimony, however, after the discussion ends it in the middle of OGC Brief at page 8. There is no conclusion offered as to the propriety of the RDI contract and the initial execution of that contract by RCC. Respondents must conclude the OGC Brief agrees that the initial extension of credit, even to a new committee such as RCC is acceptable by industry standards. This is buttressed by the fact that the OGC Brief claims that the improper extension of credit as alleged in their conclusions occurred only subsequent to June of 1990.<sup>19</sup> Respondent must conclude that the initial extension of contract in accordance with the RDI contract, and for that matter the contract itself, and the ongoing extension of credit by RDI to RCC from November 1989 until July 1990 was acceptable within the parameters of the FECA, even as interpreted by the General Counsel.

7. The General Counsel dramatically misstates the facts pertaining to Mr. Brown and his past relationship with RCC and how that related to RDI's knowledge of Mr. Brown.

The OGC Brief next attempts to argue that RDI had such substantial past business dealings with Mr. Floyd Brown through Mr. Brown's activities with a separate committee, NSPAC, that they should have had cause to make only a very narrow extension of credit to RCC, if any credit at all were to be extended. Specifically, Counsel's brief states:

"The record reflects that prior to entering the RDI/RCC contract, the companies had business dealings with the Chairman of the RCC, Mr. Floyd Brown, during the time that Mr. Brown was associated with the

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OGC Brief, page 11.

National Security Political Action Committee (NSPAC). At the time that the parties entered the RDI/RCC contract, NSPAC was deeply in debt to the companies *as a result of fundraising activities spearheaded by Mr. Brown*. The differences in the focus of the RCC fundraising program and the earlier NSPAC fundraising program ... may have provided a basis for early optimism and led the companies to undertake the RCC fundraising program. However, the companies' past dealings with Mr. Brown, as well as RCC's newly formed status, should have caused the companies to make only very narrow extensions of credit to RCC, if extensions of credit were made at all."<sup>20</sup> (Emphasis added.)

First, Counsel references "the record reflects" without citing to what record, what documents, or what testimony they are referencing. Without cross-referencing any specific evidence and to make the conclusions subsequently stated, leaves Respondent with little opportunity to rebut the evidence upon which Counsel is relying. The importance of this evidentiary record, is substantiated by the loose and very inaccurate description of Mr. Brown's relationship to RCC, specifically, Counsel states that NSPAC was deeply in debt to RDI as a result of fundraising activities spearheaded to Mr. Brown. The OGC Brief goes on to state that RDI undertook a contract with NSPAC to conduct fundraising ... which included NSPAC's 1988 Americans for Bush ("AFB") fundraising effort; Mr. Brown headed this effort. This is flatly wrong and is grossly misleading to the Commission. Counsel offers no testimony, response to depositions, response to interrogatories, materials, or any similar reliable evidence to support those statements. The fact is Mr. Brown did not spearhead fundraising for NSPAC nor AFB. As Counsel is well aware, NSPAC is a co-Respondent in this MUR and Counsel is alleging in matters involving NSPAC that all monies raised by NSPAC were the result of the RDI contract, which Counsel is also alleging was an improper extension of credit. Counsel should review the responses to interrogatories submitted on December 5, 1994 from NSPAC. Therein, Elizabeth Fediay testified she was the only officer, specifically treasurer, of NSPAC, and identified herself as the Chairman of NSPAC. There were no other officers or directors. She also testified that

she was the only one to represent NSPAC in the negotiations with RDI. A review of the responses to interrogatories by Mr. Brown and Ms. Fediay will demonstrate to the Commission that, beyond an acknowledgement that Mr. Brown was a "consultant" to NSPAC and that there was one letter sent from Ms. Fediay to Mr. Brown admonishing him to refrain from the use of NSPAC materials, there is no discussion pertaining to Mr. Brown's relationship with NSPAC. Counsel did not pose a question as to the specific details of Mr. Brown's activities with NSPAC and certainly there is no testimony or evidence whatsoever, to which Respondent is privy, which would substantiate in any fashion this rather outlandish conclusion in the OGC Brief. Even more so, to present to the Commission as a conclusionary statement that, "NSPAC was deeply in debt to the companies as a result of fundraising activities spearheaded by Mr. Brown" without the remotest scintilla of evidence to support the inference, let alone a conclusionary statement, must be seriously questioned by the Commission. Respondent would offer that it taints the entire credibility of the presentation and the reliability of the Counsel's other conclusionary statements in this matter.

However, it is those factually inaccurate, misleading and conclusionary statements in the OGC Brief that Mr. Brown spearheaded the fundraising activities of NSPAC and headed the NSPAC AFB fundraising program which the OGC Brief relies upon to conclude, that in light of that "relationship" with RDI, and that NSPAC carried over a million dollars in debt at the time the RDI/RCC contract was executed would require, based on the standard set out in the testimony of the "experts", that RCC should have raised seed money to cover any potential early losses or, at the very least, narrowly limit the line of credit by RDI to RCC.<sup>21</sup>

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<sup>21</sup>

OGC Brief, page 10.

The reliance on these inaccurate and grossly misstated facts is the basis upon which Counsel attempts to persuade the Commission that RDI should not have extended credit to RCC. Counsel jeopardizes the credibility of its entire presentation to the Commission by such gross misstatements of fact and the reliance upon those to forge the connection to a violation of the FECA. Respondent adamantly objects to such tactics and, if for no other reason, this matter should be closed on that basis alone.

8. The OGC Brief miscalculates the statement of debt, arbitrarily selects a cut-off date from which it argues the extension of credit to RCC is improper.

In reference to the OGC Brief's debt chart at pages 8 and 9, there is a miscalculation for every month cited, commencing with March of 1990 and extending through June of 1992. Relying on the numbers in the Counsel's own chart, for new debt, payments, and net debt, the actual total debt as of June 1992 was \$96,513.00 rather than the \$95,027.00 cited. (\$1,486.00 discrepancy.) These numbers are miscalculated commencing with March of 1990. The \$18,606 of previous net debt plus \$4,903 in new debt, less the \$16,098 of payment results in net debt of \$7,411, not \$6,930. These miscalculations continue throughout the individual months, including July 1991, where the numbers are off by \$2,190.

However, for ease of understanding the arguemnts, Respondent shall utilize the figures referenced in the OGC Brief in order that the Commission is able to follow the flow of the comments relative to those numbers.

The Counsel selects June of 1990 arbitrarily as the cut-off date for the time period in which the extension of credit to RCC was improper. Counsel's argument is that:



“...the amount of new debt owed the companies by RCC jumped several-fold in July and August of 1990, with net debt owed more than doubling by the end of July, having increased from \$51,546 to \$113,629. While the witnesses’ testimony indicates that extending more credit to reduce a client’s debt is normal industry practice, the \$71,695 and \$67,542 credit extension in July and August are disproportionately large considering the newly-formed status of the committee and the already existing \$51,546 debt.”<sup>22</sup>

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The old and rather infamous adage that, “hindsight is 20/20” is well applied here to Counsel’s argument. A review of the February to June 1990 activity indicates that the debt from May to June had been reduced to approximately \$51,000 from the previous \$62,000. Counsel appears to argue that the investment of \$71,000 and \$67,000 in July and August 1990 respectively, was improper because it caused the debt to jump to \$113,000 and \$123,000, respectively. The problem is that at the time the decision was made to invest the monies for July and August, RDI and RCC were not privy to the debt increase that Counsel is relying upon as a means to criticize that decision. Had the mailing in those two months or even in the month of July been successful, then the \$51,000 debt would have been reduced substantially rather than doubling. However, for Counsel to argue that the cut-off date should be subsequent to June of 1990 improperly critiques RDI’s decision to move forward in July based on information which was not available to RDI at the time; specifically, the amount of the resulting debt.

In addition, the fact of the matter is that by moving forward with the mail up until its cut-off in June of 1992, RDI reduced its debt from the \$113,629 to \$95,027 -- resulting in a net \$18,602 benefit to RDI (using the calculations presented by OGC.) Therefore, even if the Counsel were to insist the cut-off date be subsequent to July of 1990, RDI had a net gain during that time period. The fact that a profit was made by RDI from the time of August 1990 through June of 1992 on its face

requires a finding that the extension of credit could not have been an improper business decision, nor one outside the usual and normal industry practices. Even the testimony of the expert witnesses which concludes that if there is net money being made during that time period, they are successful mailings. (Stone Dep., page 61-62.)

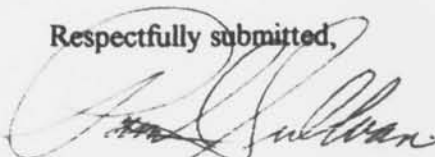
As a last point, Counsel alleges that calculating the extensions of credit made by RDI to RCC subsequent to 1990 generated a \$315,719 violation since such credit was extended outside the ordinary course of business in violation of 2 USC §441b. Counsel fails to credit the payments made to RDI during the period subsequent of June 1990 through the termination of the contract in June of 1992. Applying such credit, then the extension of credit would equal \$44,486 (\$315,719 of new debt less \$271,233 of payments for the activity subsequent to June of 1990.) Therefore, the gross amount of any alleged improper extension of credit, even accepting all of the arguments proffered by Counsel, would equal \$44,486. Notwithstanding the corrections of the calculations, Respondents steadfastly contest, the facts, legal theories, and credibility of the case which Counsel has presented to the Commission in this matter.

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Conclusion

For the foregoing reasons, Respondent requests that the Commission make a finding of no probable cause and close the file in this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul E. Sullivan".

Paul E. Sullivan, Esq.

Counsel to Respondent

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**BAKER  
&  
HOSTETLER**  
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500  
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WRITER'S DIRECT DIAL NUMBER

(202) 861-1504

August 26, 1996

**BY MESSENGER**

General Counsel Office  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463  
Attn: Tracy L. Ligon

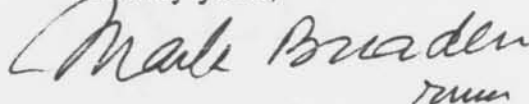
Re: MUR 3638 - Response Dynamics, Inc.

Dear Ms. Ligon:

Enclosed are additional affidavits in support of Response Dynamics' brief in the referenced matter.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,



E. Mark Braden

EMB/rvn

Enclosures

cc: Response Dynamics, Inc.

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OFFICE OF GENERAL  
COUNSEL

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**AFFIDAVIT OF STEPHEN R. EDELEN**

1. **Name**

Stephen R. Edelen  
2629 Garfield Street, N.W.  
Washington, D.C. 20008

2. **Background**

This statement is based solely on my role as former president of a non-profit organization which employed RDI under contract from 1983 to 1992. I have 14 years experience in direct marketing, working with numerous vendors and agencies in the direct marketing industry.

3. I have reviewed the contract and certain financial records relating to services provided by Response Dynamics, Inc. and its associated companies (RDI) to the National Security Political Action Committee (NSPAC). In my opinion, the contract and overall business nature of RDI's relationship with NSPAC was consistent with their relationship to other clients and was neither unusual or outside the norms of the direct marketing industry in 1988.

4. I have also reviewed certain business records provided by RDI relating to extensions of credit and mail performance reports for mailings between January and December 1988. In my opinion, these mailings were normal commercial efforts to generate income. RDI generated significant net income in prospecting from January to July 1988, and given these results, RDI was reasonable to extend credit for additional prospecting in August and September. The losses which were incurred during August and September could not have been reasonably foreseen by RDI. The credit RDI extended for additional house mailings from September to December was reasonable in light of the fact that these mailings subsequently generated over \$600,000 in net revenue.

5. In my experience, RDI follows common direct marketing industry practices in extending credit to its clients. It is common in the direct marketing industry to experience losses in direct mail prospecting with the expectation that subsequent house mailings will be profitable.

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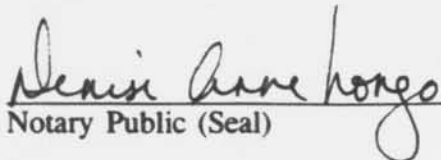


6. I have no knowledge of how NSPAC handled payment of debts owed to RDI nor do I know what collection efforts RDI made to obtain payment from NSPAC. I have no knowledge of how NSPAC expended funds raised by RDI.

Further, Affiant saith not.

  
Stephen R. Edelen

Subscribed and sworn to before me this 18<sup>th</sup> day of September, 1996

  
Notary Public (Seal)

My commission expires: 9/30/97

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AFFIDAVIT

Tony Zagotta, being first duly sworn, deposes and says:

1. My address is 122 Fourth Street, S.E., #1, Washington, D.C. 20003.
2. Since 1995, I have been the President of a grass roots organization. As part of my duties, I oversee and manage a direct mail campaign. I have worked with four different direct mail agencies in the Washington, D.C. area and have extensive knowledge of contract negotiations and direct mail procedures. From 1989 to 1993, I was the Chairman of the College Republican National Committee and was responsible for overseeing the entire direct mail program and participated in contract negotiations with several direct mail agencies.
3. I have examined the business and financial records relating to the services provided by Response Dynamics, Inc. and its associated companies ("RDI") to the National Security Political Action Committee ("NSPAC") and the Republican Challengers Committee ("RCC").
4. The overall nature of the business relationship of RDI and NSPAC is neither unusual nor outside the norms of the direct marketing industry ("Industry").
5. No provisions found in the contracts I examined between RDI and NSPAC are outside normal Industry practice.
6. I have examined business records relating to the extensions of credit for mailing services performed by RDI for NSPAC from August 1988 through June 1991. In my opinion, the mailings from August 1988 through June 1991 for NSPAC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to NSPAC for services provided conform to usual and normal Industry practice.
7. RDI has undertaken all reasonable efforts to collect the debt owed to it by NSPAC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by NSPAC.
8. The overall nature of the business relationship of RDI and RCC is neither unusual nor outside the norms of the Industry.
9. No provisions found in the contracts I examined between RDI and RCC are outside normal Industry practice.

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10. I have examined business records relating to the extensions of credit for mailing services performed by RDI for RCC from February 1990 through June 1992. In my opinion, the mailings from February 1990 through June 1992 for RCC were reasonable commercial efforts by RDI to generate income. The extensions of credit were done in a manner conforming with the ordinary course of business in this Industry. All extensions of credit by RDI to RCC for services provided conform to usual and normal Industry practice.
11. RDI has undertaken all reasonable efforts to collect the debt owed to it by RCC, and I know of no additional commercially reasonable steps that could be undertaken by RDI at this time to collect debts owed to it by RCC.

Anthony J. Zagotta

~~Tony~~ Zagotta  
Anthony

Subscribed and sworn to before me this 26<sup>th</sup> day of September, 1996.

Sarah J. Town

Notary Public

My Commission Expires: \_\_\_\_\_

SARAH J. TOWN  
Notary Public, District of Columbia  
My Commission Expires April 30, 2000

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

In the Matter of )

Response Dynamics, Inc., et al. )

National Security Political Action Committee )

and Elizabeth I. Fediay, as treasurer )

Republican Challengers Committee )

and Robert E. Miller, Jr., as Treasurer )

MUR 3638<sup>B</sup>

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**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. STATEMENT OF THE CASE

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("the Commission") by the Democratic National Committee on October 5, 1992. On September 27, 1994, the Commission found reason to believe that Response Dynamics, Inc. and its associated companies (RDI) violated 2 U.S.C. § 441b by extending credit outside of the ordinary course of business and that the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer (NSPAC), and the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer (RCC) violated 2 U.S.C. § 441b by accepting the resulting prohibited contributions.<sup>1</sup>

<sup>1</sup> In addition, the Commission found reason to believe that NSPAC and RCC violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by virtue of their affiliation, that RCC violated 2 U.S.C. §§ 433(b)(2) and 441a(f) by virtue of affiliation with a third committee, the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer (PVC), and that PVC violated 2 U.S.C. § 433(b)(2) by virtue of affiliation with RCC. The Commission also found reason to believe that NSPAC and PVC violated 2 U.S.C. § 434(c), and that PVC violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Mrs. Wesley West. In light of the age of the case (1988-92 activity), this Office focused exclusively on the most significant violations, the Section 441b violations, as discussed in this report. Accordingly, we recommend that the Commission take no further action with respect to the remaining violations.

On August 2, 1996, this Office submitted to each of the three respondents a General Counsel's Brief, setting forth this Office's position on the legal and factual issues of the matter, and its recommendation that the Commission find probable cause to believe that the violations occurred.

## II. ANALYSIS

This Report incorporates by reference the three General Counsel's Briefs and all arguments and authorities contained therein. The following is submitted in response to the arguments presented by Respondents in their responses to the General Counsel's Briefs.

As set forth in greater detail in the General Counsel's Briefs in this matter, on April 7, 1986, NSPAC entered a contract with RDI, wherein RDI was appointed to carry out a direct response fundraising program. Between the time of the contract's inception and its end in May, 1991, NSPAC accumulated a debt owed to RDI of \$1,268,939.19, which still exists to date. Similarly, on November 7, 1989, RCC entered a contract with RDI, wherein RDI was appointed to carry out a direct response fundraising program. Between the time of the contract's inception and its end in June of 1992, RCC accumulated a debt owed to RDI of \$95,027.77, which still exists to date. Based on the testimony regarding usual and normal practices in the industry of two witnesses who own companies that operate in the direct marketing industry, this Office concluded that there is probable cause to believe that the extensions of credit made by RDI to NSPAC subsequent to May 1989, which total \$479,230, were made outside of the ordinary course of business in violation of 2 U.S.C. § 441b, and that the extensions of credit made by RDI

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to RCC subsequent to June 1990, which total \$315,719, were made outside of the ordinary course of business in violation of 2 U.S.C. § 441b.

In response to the General Counsel's Briefs, the respondents make numerous arguments.<sup>2</sup> Specifically, they argue that this Office should not be allowed to apply the regulations found at 11 C.F.R. § 116.3 and 116.4 in this matter since those regulations were enacted after the events at issue, and the "normal industry practice" standard is new criteria that first surfaced in the Section 116 regulations which did not become effective until 1990. Contrary to the respondents' argument, the normal industry practice standard is not new criteria first set forth in the Section 116 regulations promulgated in October 1990. Rather, the usual and normal business practice standard is inherent in the language of the regulation in effect in 1986, when the first of the two contractual relationships at issue was commenced. The pre-1990 regulation provides that a corporation may extend credit ... "provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors which are of similar risk and size of obligation." 11 C.F.R. § 114.10(a). Significantly, the term business contained in the regulation is defined as the occupation, work, or trade in which one is engaged. Webster's II New Riverside University Dictionary, 1988. Indeed, in Advisory Opinion 1979-36, the Commission cites the Section 114.10(a) regulation, and in applying and obviously interpreting that regulation,

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<sup>2</sup> In light of the large number of arguments raised by the respondents and the degree of overlap in the various arguments of the three respondents, we have grouped arguments together, where possible. Herein, we refer to the individual respondents collectively as "respondents."

conditioned its approval of the proposed credit extension arrangement upon, inter alia, the arrangement's conformance to "normal industry practice."

Respondents also argue that since the RDI/NSPAC contract was economically favorable to RDI, the extensions of credit to NSPAC cannot be considered a contribution. They argue that the Commission's review of a commercial relationship is restricted to whether or not a corporation has provided services or goods to political candidates or organizations for no compensation or at a compensation level lower than would be the case in the ordinary course of business, and disagree with our position that the overall profitability of the RDI/NSPAC relationship is not relevant to the issue of whether they extended credit outside of the ordinary course of business.

Contrary to the respondents' arguments, a contribution can exist where the overall contractual relationship appears economically favorable to the corporation. As the respondents argue, the ban on corporate contributions is not designed "to generally regulate contractual relationships between vendors and political organizations." This Office does not urge the Commission to attempt to do so. To wit, this Office does not urge the Commission to look beyond the terms of the contract, the conduct of the parties, and the normal industry practice and to decide what a fair bargain for the parties would be and to offset debt created under the contract by the amount of inequity. Rather, the Commission generally accepts the debt created under the terms of the contract at face value. Nevertheless, the Commission is obligated to evaluate the transaction for conformance with the Act's requirements.

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Under the terms of the RDI/NSPAC contract, NSPAC owes a debt of approximately \$1.3 million for direct marketing services provided by RDI. While the respondents assert that RDI received significant income (\$585,284.92) as a result of its rental of NSPAC's mailing list, 1) the contract expressly grants RDI the use of NSPAC's mailing list as a bargained for source of income in addition to the agreed upon compensation without any credit due to NSPAC, or any offsetting of NSPAC's debt, based on income received by RDI; 2) RDI has not applied the income resulting from use of NSPAC's mailing list to NSPAC's debt; and 3) our expert testimony indicates that it is not a usual practice in the industry for a company to apply list rental income to a client's outstanding debt if, as in the RDI/NSPAC contract, during the course of the contract, the company had the right to rent the list for itself. Under these circumstances, because RDI has not received full compensation for services rendered, RDI has in fact been compensated at a level lower than would be the case in the ordinary course of business. This is so irrespective of the overall profitability of the contractual relationship.

The respondents argue that "it is not enough to claim that such direct mail potentially influences federal elections" and that in order to establish a Section 441b violation, this Office must tender specific direct mail pieces and demonstrate that the text of the direct mail pieces expressly advocates the election or defeat of certain federal candidates. This is untrue. The Commission's regulations implementing Section 441b provide a specific standard for determining whether an extension of credit by a corporation to a political committee is a contribution. Under the regulations, when a corporation in its capacity as a commercial vendor extends credit to a political committee

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an impermissible corporate contribution results unless the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation, which was the standard applied in this matter.<sup>3</sup> See 11 C.F.R. § 116.3 (1990); 11 C.F.R.

<sup>3</sup> In any event, as noted in the General Counsel's Brief, many of NSPAC's direct mail pieces contained solicitations for purposes of electing or defeating certain candidates, lobbying Congress to support a conservative agenda, and re-electing conservative candidates. A sample of the text of some of NSPAC's direct mail pieces follows:

**Package ID: DPUK1**

**Name: Three Heroes**

**Date Mailed: December 5, 1989**

Three great American heroes need our help today. Conservative U.S. Senators Jesse Helms, Mitch McConnell, and Dan Coats are facing massive liberal opposition. I am asking you today to join the National Security Political Action Committee Task Force... and help ensure that these three great men are reelected to the U.S. Senate....

**Package ID: EPUI3A**

**Name: NSPAC Strategy**

**Date Mailed: September 26, 1990**

I have sent you this National Security Political Action Committee 1990 Final Election Strategy for your immediate review and approval....Because right now you and I are involved in the most exciting, ambitious Conservative movement of our time. And today the National Security Political Action Committee (NSPAC) must take action on our final strategy. A strategy designed to ensure that the liberal majority sees its final day in Congress on November 6th....Because today you can provide an extra phone line or more media time for our Conservative candidates with your \$200 or more contribution....And your \$200 will help provide Conservatives with the necessary funding to defeat their liberal opponents.

**Package ID: EPUJ1A**

**Name: Press Release**

**Date Mailed: October 5, 1990**

The exclusive CAPITAL PRESS OFFICE RELEASE I've sent you today demands your immediate attention and response. If I don't hear from you in 10 days, I will assume you want the four liberals on that RELEASE to stay in control of the U.S. Senate....I do not want these four liberal Senators to hear that NSPAC has targeted them for defeat....The polling data I have shows that, unless we fight back now, liberal Democratic Senators Joe Biden, Tom Harkin, Carl Levin and Paul Simon will all be reelected this year....To help

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§ 114.10 (1987); Explanation and Justification, Federal Register, Vol. 55, No. 124, 26381 (1990).

The respondents challenge the testimony of the two witnesses deposed by this Office on three fronts.<sup>4</sup> First, they argue that the witnesses are biased. Specifically, the respondents argue that Ms. Stone is biased because she testified that she would not join the Direct Response Fundraising Council (DRFCO), which according to Ms. Stone is an organization created as a vehicle for the industry to police itself. Respondents argue that Mr. Craver is biased because he has been a consultant to or employed by the Complainant, the Democratic National Committee.

Contrary to the respondents' argument, Ms. Stone's testimony need not be disallowed because of bias. Ms. Stone made various assertions of objective facts regarding previous actions of RDI. Based on these past actions, which Ms. Stone viewed as improprieties, she stated that she would not join DRFCO because RDI "has been allowed to be a member when people know that they have consistently violated a variety of the guidelines." Ms. Stone's knowledge of RDI's past actions and her familiarity with

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Conservatives win back the Senate next month, I am counting on your generous \$150 or \$100 contribution today. The election is only about 30 days away. To help the candidates, I need to hear from you in 10 days or less.

<sup>4</sup> Respondents have submitted virtually identical affidavits of seven purported "experts," who state in conclusory fashion that they have examined RDI's business and financial records related to the services provided by RDI to NSPAC and RCC. Each of the "experts" opines that the overall nature of the business relationship of RDI and NSPAC and of RDI and RCC is neither unusual nor outside of the norms of the direct marketing industry, and that the extensions of credit were done in a manner conforming with the ordinary course of business in the industry. However, this Office has not had an opportunity to question any of these affiants regarding any potential bias or to ascertain how they reached their conclusions in light of the amount of debt involved in this matter.

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other RDI contracts simply provide a basis for her candid assessment of the company, not prejudicial bias. Moreover, the majority of Ms. Stone's testimony regarding usual and normal practices in the direct mail industry was given before this Office made specific inquiries regarding RDI. Similarly, even if Mr. Craver has been a consultant to or employed by the complainant, as the respondents contend, that alone does not evidence bias especially in this matter since Mr. Craver had no knowledge of which this Office is aware of the identity of either the respondents or the complainant.

Next, the respondents argue that there is no consensus regarding "usual industry standards" in the testimony elicited by this Office. They assert that "the two witnesses express completely different opinions pertaining to substantial and material industry activities so as to demonstrate respondents' very point that the industry standards are extremely broad and the RDI contract fits within those industry standards parameters." However, this Office submits that the testimony of the two witnesses, when read completely, reflects more consistency than divergence with respect to the material issues of this matter.

The respondents further assert that the witnesses' testimony does not support the conclusions reached by this Office. Specifically, the respondents argue that the testimony of our expert witnesses does not support our conclusion that it is not usual or normal in the industry for a company that has contracted with a client on terms such as those contained in the RDI/NSPAC contract to offset or issue a credit against the client's debt based on the amount of income received as a result of their use of the client's mailing list. Respondents point to a part of the deposition testimony in which Mr. Craver indicated

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that when his company co-owns a client's mailing list, which generally entitles a company to rent the list and receive list rental income, he would apply income received as a result of the co-ownership to the client's outstanding debt. Craver's deposition, p 51. Similarly, respondents point to Ms. Stone's testimony that although she would not apply income received as a result of co-owning a client's mailing list to the client's outstanding debt, she is aware of another company in the industry that has done so in the past. Stone's Deposition, pp. 82-83. However, respondents have failed to acknowledge the witnesses' further testimony in this regard. Both witnesses testified that it is not usual and normal in the industry for companies to co-own the mailing lists of political committees. Stone's deposition, pp. 66-67; Craver's deposition, p. 64. Significantly, additional testimony of the witnesses relevant to the statements cited by the respondents was that although Mr. Craver's company issues credits based on co-ownership, he "doubts" that such practice is usual and normal in the industry. Also, Ms. Stone could only recall one company that issued such credits and the incidence(s) occurred back in the 1970s, Stone's Deposition, p. 109; she further testified that co-owning mailing list of political committee clients has not been a usual and normal practice in the industry since around 1985, Stone's Deposition, pp. 66-67. Further, Ms. Stone testified that it would be unusual for a company to apply list rental income to a client's outstanding debt if, during the course of the contract, the company had the right to rent the list for itself. Stone's deposition, pp. 84-85.<sup>5</sup>

<sup>5</sup> Both witnesses testified that when a company does co-own a client's mailing list, income received from the company's rental of the list is the company's income, not the client's, Stone's deposition, p. 59-61; Craver's deposition, p. 36. The witnesses' testimony indicates that if a company applies list rental income to a client's outstanding

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The respondents argue that in presenting the hypothetical debt ratio scenarios to the expert witnesses, this Office misled the witnesses; and therefore the conclusions drawn from the witnesses' responses to the scenario are invalid. Specifically, the respondents argue that this Office's statement that in 1989 and 1990 the amount of NSPAC's debt rose to 300% and 533% of NSPAC's income for those respective years is misleading. This Office has reviewed the scenarios presented in conjunction with the debt to income ratios, which were taken from Aging Summaries provided to this Office by RDI. Upon review, we have determined that the language used is ambiguous as one could construe the ratios, as stated, to represent the client's total debt at the end of the respective year relative to the client's total income received over the life of the relationship. The figures actually represent the amount of the client's total debt at the end of the respective years relative to the amount of income the client received in that specific year only. We note, however, that the scenario was posed to the witnesses for the limited purpose of establishing whether RDI's continued extensions of credit to NSPAC would fall within normal industry practice; the vast majority of information provided by the witnesses regarding usual and normal practices pertained to general practices in the industry and was elicited from the witnesses prior to posing the hypothetical.<sup>6</sup>

Even if the witnesses' testimony regarding the hypothetical scenario is disregarded, the continued extensions of credit by RDI to NSPAC were still violative of

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debt when, during the course of the contract, the company co-owned the list and had the right to rent the list for itself, the company is giving up an income stream to which it is entitled under the terms of the contract. See Stone's deposition, pp. 87-88; Craver's deposition, pp. 52-53.

<sup>6</sup> In addition, the debt to income ratio scenario was not in any way relied upon by this Office in considering the legality of the extensions of credit made by RDI to RCC.

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**Section 441b.** Pursuant to the Commission's revised regulations, which became effective on October 3, 1990, in determining whether credit has been extended in the ordinary course of business, the Commission will consider 1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; 2) whether the vendor received prompt payment in full if it previously extended credit to the same political committee; and 3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c). At the time the Commission's revised regulations became effective on October 3, 1990, NSPAC's debt to RDI was \$1,227,269, and had not been reduced below \$1,200,000 since January 1990, or below \$1,000,000 since January 1989. Even assuming that RDI's initial extensions of credit were permissible, their failure to receive prompt payment in full for them is sufficient to establish that extensions of credit by RDI to NSPAC subsequent to the October 3, 1990 effective date of the revised regulations were made outside of the ordinary course of business based on the second prong of the regulations alone. Therefore, the extensions of credit made by RDI to NSPAC subsequent to October 3, 1990, which total approximately \$115,195, were made outside of the ordinary course of business in violation of Section 441b.

The respondents argue that this Office's calculation of the amount of the improper extensions of credit made by RDI to NSPAC<sup>7</sup> and to RCC is inaccurate because the figure represents the amount billed by RDI, not new extensions of credit; and because this

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<sup>7</sup> Although the respondents' argument was made in response to our previous conclusion that the improper extensions of credit by RDI to NSPAC commenced in June 1989, and totaled \$479,230, we address the argument here inasmuch as this Office's method of calculating the total amount in violation has not changed.

Office failed to acknowledge the money paid to RDI subsequent to the cutoff dates. However, inasmuch as extensions of credit include the cost of the goods/services rendered plus a profit, the amount billed would be the appropriate figure. In addition, when an extension of credit is made outside of the ordinary course of business, the amount of the extension becomes a contribution at the time the extension is made; the amount of the contribution does not vary based on subsequent payments.

The respondents challenge this Office's conclusion that RDI's previous business dealings with the chairman of RCC, Mr. Floyd Brown, during the time that Mr. Brown was associated with NSPAC should have caused RDI to make only very narrow extensions of credit to RCC, if extensions were made at all. Specifically, respondents assert that Mr. Brown had no authority as a consultant to NSPAC to obligate NSPAC; that Elizabeth Fediay was the sole person authorized to conduct fundraising activities with RDI. The respondents assert that this Office's statement that "At the time that the parties entered the RDI/RCC contract, NSPAC was deeply in debt to RDI as a result of fundraising activities spearheaded by Mr. Floyd Brown," is inaccurate.

This Office's statement that NSPAC's American's for Bush fundraising effort was spearheaded by Mr. Brown was based on various news articles. However, notwithstanding the accuracy of the foregoing statement, in concluding that RDI should have made only very narrow extensions of credit to RCC, if extensions were made at all, this Office relied on the undisputed alternative basis that RCC was a newly formed committee, which the testimony of the witnesses deposed by this Office indicates should cause a company to extend credit very narrowly, if at all.

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The respondents argue that this Office's position is that RDI's mailings on NSPAC's and RCC's behalf should have been discontinued before mailings to the house list were pursued, which they argue would have been commercially unreasonable and directly contrary to standard industry practice.<sup>8</sup> This mischaracterizes this Office's position in this matter. Based on the testimony of the experts we deposed, we realize that in the industry it is expected that prospect mailings, which are designed to help the client build a house file, will lose money, and that direct mail vendors and their clients anticipate that subsequent mailings to the house file would generate net income, and that it could take a year to a year and a half to develop a house list, Craver's deposition, p. 46; Stone's deposition, p. 40-41.

Indeed, this Office has never challenged RDI's prospect mailings, nor its use of NSPAC's house list. Nor has this Office challenged the large-scale unsuccessful mailing in 1988, which respondents identify as a primary reason for the NSPAC debt.<sup>9</sup> Rather,

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<sup>8</sup> The respondents assert that in Advisory Opinion 1979-36, the Commission approved as normal industry practice an agreement between a direct mail firm and a federal political candidate which provided that "irrespective of the actual total amount of fees and expenses, the committee shall only be required to pay a maximum of 3/4 of the total amount of contributions received during the period of the agreement as a result of [the vendor's] direct mail activities." The respondents assert that RDI's working relationship with NSPAC conformed with the payment percentages "established" as normal industry practice by the Commission's opinion. The respondents have misstated the Commission's conclusion in that opinion. Contrary to the respondents' assertion, in Advisory Opinion 1979-36, the Commission did not "establish" that a given payment percentage was normal industry practice. Rather, the Commission concluded that "if, in fact, (1) the proposed financial agreement ... is of a type which is normal industry practice and contains the type of credit which is extended in the ordinary course of [the vendor's] business ... then the amounts expended by Working Names will not be considered to be campaign contributions [emphasis added]. See Advisory Opinion 1979-36.

<sup>9</sup> Similarly, this Office's conclusion relevant to RCC was not based on the fact that credit was being extended or that there was a debt owed to RDI.

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this Office's focus has been the legality of RDI's continued extensions of credit subsequent to the 1988 mailings, despite NSPAC's rising debt. We note that the respondents received some income from mailings on a fairly consistent basis, as the respondents point out. Nevertheless, RDI's continued extensions of credit to NSPAC, which the respondents assert were made to reduce NSPAC's debt, consistently, with rare exception, increased the NSPAC debt. As noted in the General Counsel's Brief, a review of records and actual mailings provided by RDI reveals that several later mailings, including several done in 1990 and 1991, were not aimed at reducing the NSPAC debt. Instead, these mailings contained solicitations for purposes such as to lobby Congress to support the conservative agenda, to defeat or re-elect certain candidates, or to re-elect conservative candidates. See n. 3, supra. In addition, the record reflects that NSPAC made \$12,150 in direct contributions to candidates in 1989, and \$2,150 in direct contributions in 1990.

In sum, this case presents relatively complex financial dealings between respondents that extended over the course of many years. Respondents have raised a number of arguments that distort the positions articulated in the General Counsel's Briefs and that tend to confuse the basic underlying principle at issue here. As we have shown, relevant to the RDI/NSPAC relationship, the continued extensions of credit for further fundraising activity despite significant and persistent uncollected debt amounted to a prohibited corporate contribution in violation of Section 441b. In addition, the large amount of RDI's extensions of credit to RCC despite the newly formed status of the committee and the already existing debt resulted in a prohibited contribution. This Office

therefore recommends that the Commission find probable cause to believe that the respondents violated Section 441b. However, given the age of the activity, and the resources required to pursue this matter further, we recommend that the Commission take no further action in this matter.

### III. RECOMMENDATIONS

1. Find probable cause to believe that Response Dynamics, Inc., and its associated companies, Direct Response Data Management Service, Inc., American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design, Mid-American Printing Company, and Fulfillment Management Services, Inc. violated 2 U.S.C. § 441b and take no further action.
2. Find probable cause to believe that the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. § 441b and take no further action.
3. Find probable cause to believe that the Republican Challengers Committee and Robert E. Miller, as treasurer, violated 2 U.S.C. § 441b and take no further action.
4. Take no further action against the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer.
5. Take no further action against Mrs. Wesley West.
6. Approve the appropriate letters.
7. Close the file.

Date

10/18/96

Lawrence M. Noble  
General Counsel

Staff assigned: Tracey L. Ligon

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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: OCTOBER 24, 1996

SUBJECT: MUR 3638 - General Counsel's Report dated October 18, 1996.

The above-captioned document was circulated to the Commission  
on Monday, October 21, 1996.

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

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	—
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda for

Tuesday, October 29, 1996.

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 3638  
Response Dynamics, Inc., et al.; )  
National Security Political Action )  
Committee and Elizabeth I. Fediay, )  
as treasurer; )  
Republican Challengers Committee )  
and Robert E. Miller, Jr., as )  
treasurer )

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 4-1 to take the following actions in MUR 3638:

1. Find probable cause to believe that  
Response Dynamics, Inc., and its  
associated companies, Direct Response  
Data Management Service, Inc., American  
Telephone Marketing Group, Inc., The  
Best Lists, Inc., American Graphic  
Design, Mid-American Printing Company,  
and Fulfillment Management Services, Inc.  
violated 2 U.S.C. § 441b and take no  
further action.
2. Find probable cause to believe that the  
National Security Political Action  
Committee and Elizabeth I. Fediay, as  
treasurer, violated 2 U.S.C. § 441b and  
take no further action.

(continued)

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3. Find probable cause to believe that the Republican Challengers Committee and Robert E. Miller, as treasurer, violated 2 U.S.C. § 441b and take no further action.
4. Take no further action against the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer.
5. Take no further action against Mrs. Wesley West.
6. Approve the appropriate letters as recommended in the General Counsel's October 18, 1996 report.
7. Close the file.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

10-30-96  
Date

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

9604371787



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 6, 1996

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Eric D. London, Esquire  
Carol Darr  
Democratic National Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003

RE: MUR 3638

Dear Mr. London and Ms. Darr:

This is in reference to the respective complaints that you filed with the Federal Election Commission on August 12, 1992 and October 5, 1992 against the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer ("PVC"), the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer ("RCC"), and Wesley West, and against Response Dynamics, Inc., and its associated companies, Direct Response Data Management Service, American Telephone Marketing Group, Inc., The Best Lists, Inc., American Graphic Design Inc., Mid-America Printing Co., and Fulfillment Management Services ("RDI"), National Security Political Action Committee and Elizabeth I. Fediay, as treasurer ("NSPAC"), RCC, PVC, and Floyd Brown.

Based on the complaints, which were subsequently merged and designated MUR 3638, the Commission found that there was reason to believe that RDI violated 2 U.S.C. § 441b; that NSPAC violated 2 U.S.C. §§ 433(b)(2), 434(c), 441a(f), and 441b; that RCC violated 2 U.S.C. §§ 433(b)(2), 441a(f), and 441b; that PVC violated 2 U.S.C. §§ 433(b)(2), 434(a)(1), 434(c), and 441a(f); and that Mrs. Wesley West violated 2 U.S.C. § 441a(a)(1)(C). Accordingly, the Commission instituted an investigation in the matter.

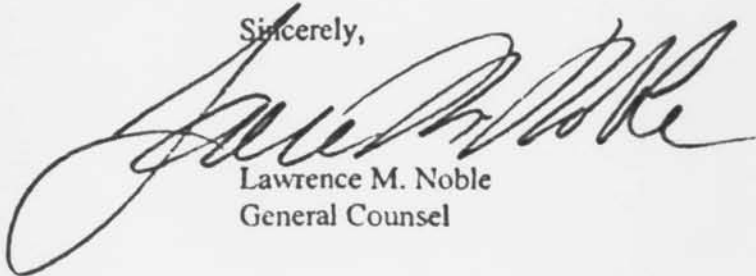
After an investigation was conducted and the General Counsel's and the respondent's briefs were considered, on October 29, 1996, the Commission found that there was probable cause to believe RDI violated 2 U.S.C. § 441b by extending credit outside of the ordinary course of business and that NSPAC and RCC violated 2 U.S.C. § 441b by accepting the resulting prohibited contributions. In consideration of the circumstances of the matter, however, the

Commission determined on October 29, 1996, to take no further action against the respondents, and closed the file in this matter. This matter will become part of the public record within 30 days.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble  
General Counsel

Enclosure  
General Counsel's Report

9604371709



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1996

Mr. Floyd Brown  
2020 Pennsylvania Avenue, N.W.  
Suite 322  
Washington, D.C. 20006

RE: MUR 3638

Dear Mr. Brown:

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,

A handwritten signature in black ink, appearing to read "Tracey L. Ligon", is written over a horizontal line.

Tracey L. Ligon  
Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1996

Russell W. Sullivan, Esquire  
Vinson & Elkins, L.L.P.  
1455 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-1008

RE: MUR 3638  
Mrs. Wesley West

Dear Mr. Sullivan:

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,

A handwritten signature in black ink, appearing to read "Tracey L. Ligon", with a long horizontal flourish extending to the right.

Tracey L. Ligon  
Attorney

9604371791





FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20463

November 6, 1996

E. Mark Braden, Esquire  
Baker & Hostetler  
1050 Connecticut Avenue, N.W., Ste. 1100  
Washington, D.C. 20036-5304

RE: MUR 3638  
Response Dynamics, Inc., et al.

Dear Mr. Braden:

This is to advise you that on October 29, 1996, the Federal Election Commission found probable cause to believe that your clients, Response Dynamics, Inc., et al., violated 2 U.S.C. § 441b by extending credit outside of the ordinary course of business. After considering the circumstances of this matter, however, the Commission also determined to take no further action against your clients and closed its 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 Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence M. Noble", is written over the typed name.

Lawrence M. Noble  
General Counsel

96043771702



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1996

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

RE: MUR 3638  
Republican Challengers Committee  
and Robert E. Miller, Jr., as Treasurer

Dear Mr. Sullivan:

This is to advise you that on October 29, 1996, the Federal Election Commission found probable cause to believe that your clients, the Republican Challengers Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. § 441b by accepting prohibited contributions in the form of extensions of credit made outside of the ordinary course of business. After considering the circumstances of this matter, however, the Commission also determined to take no further action against your clients and closed its 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 Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence M. Noble", is written over the typed name and title.

Lawrence M. Noble  
General Counsel



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1996

William J. Olson  
8180 Greensboro Drive, Suite 1070  
McLean, Virginia 22102-3823

RE: MUR 3638  
Presidential Victory Committee  
and Robert E. Miller, Jr., as Treasurer

Dear Mr. Olson:

On October 3, 1994, you were notified that the Federal Election Commission found reason to believe that the Presidential Victory Committee and Robert E. Miller, Jr., as treasurer, violated 2 U.S.C. §§ 433(b)(2), 434(a)(1), 434(c), and 441a(f) of the Federal Election Campaign Act of 1971, as amended ("the Act"). On November 21, 1994, you submitted a response to the Commission's reason to believe findings. After considering the circumstances of the matter, the Commission determined on October 29, 1996, to take no further action against the Presidential Victory Committee and Robert E. Miller, Jr., 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,

A handwritten signature in black ink, appearing to read "Tracey L. Ligon", is written over a horizontal line.

Tracey L. Ligon  
Attorney

96043771724



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1996

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

RE: MUR 3638  
National Security Political Action  
Committee and Elizabeth I. Fediay, as treasurer

Dear Mr. Sullivan:

This is to advise you that on October 29, 1996, the Federal Election Commission found probable cause to believe that your clients, the National Security Political Action Committee and Elizabeth I. Fediay, as treasurer, violated 2 U.S.C. § 441b by accepting prohibited contributions in the form of extensions of credit made outside of the ordinary course of business. After considering the circumstances of this matter, however, the Commission also determined to take no further action against your clients and closed its 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 Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence M. Noble", is written over the typed name and title.

Lawrence M. Noble  
General Counsel

ORIGINAL

C O N F I D E N T I A L

BEFORE THE  
FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
DEC 28 11 30 AM '95

- - - - - X  
In re: :  
: VOLUME I  
MUR 3639 :  
:  
- - - - - X

Washington, D.C.

Wednesday, December 13, 1995

Deposition of

ANN E. STONE WESCHE

a witness, called for examination by counsel for  
the Federal Election Commission, pursuant to  
notice and agreement of counsel, beginning at  
approximately 12:56 p.m., at the offices of the  
Federal Election Commission, 999 E Street, N.W.,  
Washington, D.C., before Connie Bursher, a notary  
public in and for the District of Columbia, when  
were present on behalf of the following parties:

**BETA**

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## 1 APPEARANCES:

2 On behalf of the Federal Election Commission:

3 TRACEY L. LIGON, ESQUIRE  
4 ABIGAIL A. SHAINÉ, ESQUIRE  
5 Office of the General Counsel  
6 999 E Street, N.W.  
7 Washington, D.C. 20463  
8 (202) 219-3690

## 9 ALSO PRESENT:

10 Ann Weissenborn

11 \* \* \* \* \*

## C O N T E N T S

EXAMINATION BY:	PAGE
Counsel for the Federal Election Commission	4
WESCHE DEPOSITION EXHIBITS:	
No. 1 - Agreement	118
No. 2 - "Ethical Business Practice Guidelines"	140

\* \* \* \* \*

## P R O C E E D I N G S

Whereupon,

ANN E. STONE WESCHE

was called as a witness and, having been first  
duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR FEDERAL

ELECTION COMMISSION

BY MS. LIGON:

Q My name is Tracey Ligon, and I'm here  
today representing the Federal Election Commission  
along with Ann Weissenborn and Abigail Shaine.

This deposition is being taken pursuant  
to a subpoena which was issued in connection with  
the matter designated MUR 3638.

Please treat this proceeding as if you  
were in a court of law and remember that you're  
under oath.

Please also remember that, pursuant to  
section 437G of Title 2 of the United States Code,  
the confidentiality of this matter must be  
maintained until the Commission closes the matter.

I'll be asking you questions regarding

1 an investigation that's being conducted pursuant  
2 to the Federal Election Campaign Act of 1971, as  
3 amended.

4 If I ask you a question and you don't  
5 understand the question I've asked, please just  
6 let me know and I'll rephrase the question for  
7 you.

8 If you don't hear a question I've asked,  
9 please just let me know that, and I will repeat  
10 it.

11 If you realize that you have made a  
12 response that's incomplete or inaccurate, please  
13 just let me know that and I'll give you an  
14 opportunity to modify your response.

15 Keep in mind that the court reporter can  
16 only take down words, so please respond verbally,  
17 as opposed to nodding or anything of that nature.

18 And if you need to take a break for any  
19 reason, please just let me know and as soon as  
20 I've finished my line of questioning, we'll break.

21 Would you state your full name and  
22 address for the record.

1           A     My name is Ann Elizabeth Wesche --  
2     W-e-s-c-h-e -- Stone.

3                     Home or business?

4           Q     Home, please.

5           A     503 Summers Court, Alexandria, Virginia  
6     22301.

7                     And that's Summers -- S-u-m-m-e-r-s.

8           Q     What is your social security number?

9           A

10          Q     Are you married?

11          A     Currently divorced.

12          Q     For the record, are you represented here  
13     today by counsel?

14          A     No, I'm not.

15          Q     Okay. Have you ever been deposed  
16     before?

17          A     Yes.

18          Q     Okay. When were you deposed?

19          A     The last time I was deposed was probably  
20     about -- probably last year. I served as an  
21     expert witness in a case.

22          Q     Okay. Were you deposed at any other



1 time?

2 A I've been deposed over the year pursuant  
3 to different matters, you know, as a witness for  
4 different cases.

5 Q Okay. So you're pretty familiar with  
6 this?

7 A Yes.

8 Q Okay. Did you discuss the fact that you  
9 were subpoenaed for this deposition with anyone?

10 A Only my assistant, who -- who was in  
11 charge of scheduling.

12 Q Okay. And what was said during that  
13 discussion?

14 A Just simply that I had to appear. She  
15 was privy to the letter you sent, and that's it.

16 Q Okay. And to your knowledge, has she  
17 discussed --

18 A No. And we have -- all employees are  
19 required to sign a confidentiality agreement.  
20 They are not allowed to discuss anything outside  
21 of the office --

22 Q What is your --

1 A -- otherwise, we can sue them.

2 Q Ms. Stone, what is your occupation?

3 A I'm a direct response marketing  
4 consultant.

5 Q And where do you work?

6 A I have my own firm. It's called Ann  
7 E.W. Stone and Associates, Inc.

8 Q Okay. Where is that located?

9 A 2900 Eisenhower Avenue, Suite 200,  
10 Alexandria, Virginia 22314.

11 Q How long have you been in business?

12 A This particular company has been in  
13 business since 1982.

14 Q And where did you work before you  
15 started Ann Stone and Associates?

16 A Before ASA, I was vice president for the  
17 Richard Viguerie Company.

18 Q Okay. And as vice president, what did  
19 you do?

20 A I supervised and oversaw all of the  
21 political campaigns and candidate mail.

22 Q Did you have any other position title

1 while you were at the Viguerie Company?

2 A Yes. I also served as an account  
3 supervisor and account executive.

4 Q Okay.

5 A I was there from 1976 to 1982.

6 Q And prior to working for the Viguerie  
7 Company, where did you work?

8 A I worked as a marketing manager for a  
9 newspaper called "Human Events."

10 Q Okay. And as marketing manager, what  
11 exactly did you do?

12 A I oversaw the direct marketing  
13 promotions, their list rentals, and also their  
14 advertising sales and production.

15 Q Okay. Would you please describe your  
16 educational background?

17 A I have a business administration degree  
18 -- what am I saying -- bachelor's -- a B.A., a  
19 bachelor's degree from George Washington  
20 University, a double major in history, with a  
21 concentration in Sino-Soviet affairs, and  
22 communications.

1 (Pause)

2 I'm sorry. I also had graduate work at  
3 GW and also in consortium with Wharton Business  
4 School.

5 Q What type of services does Ann Stone and  
6 Associates provide?

7 A We provide full-service, direct-response  
8 marketing, which, defined, is any form of  
9 advertising that elicits a response from an  
10 audience. A large part of our work is political.  
11 We do direct mail.

12 We do what is called space-advertising,  
13 newspaper and magazine advertising with coupons,  
14 800 numbers.

15 And we've done some radio and television  
16 direct-response. We don't do as much as I'd like,  
17 but --

18 Q So, then, with the industry that you  
19 work in, would the name of that industry be  
20 direct-response marketing industry or --

21 A Our national association is called the  
22 Direct Marketing Association. But

1 "direct-response marketing" is the more proper  
2 term.

3 Q And that would encompass the direct mail  
4 industry?

5 A Yes, mm-hmm. In the old days, back when  
6 I started in the early '70s, in fact, the  
7 association was called the Direct Mail Marketing  
8 Association.

9 But as the other technologies have  
10 developed, it's now just called the Direct  
11 Marketing Association.

12 Q How many employees does Ann Stone and  
13 Associates have?

14 A Right now, we have, I believe, under 20.

15 Q Okay. And approximately how many  
16 clients has your company had since it has been in  
17 business -- approximately?

18 A I'd say 100, maybe 150.

19 Q Okay. And --

20 A Never counted. I'll have to do that.

21 Q Approximately what percent of those  
22 clients are political clients?



1           A     At any given time, it ranges from about  
2 to 70 percent of our business. It depends. It  
3 depends on the season.

4           Q     Currently how many clients does the  
5 company have?

6           A     It's probably 50 percent political right  
7 now.

8           Q     Okay. And currently, what is the total  
9 number of clients that --

10          A     I don't even know that. I'd say we  
11 probably have 30 clients.

12          Q     Ms. Stone, would you please describe,  
13 step by step, the process that your company goes  
14 through in providing services, starting from the  
15 point that a potential client comes through the  
16 door.

17                     And for the purposes of the question,  
18 would you assume that the potential client is a  
19 political client that is interested direct mail  
20 services.

21          A     Would you like me to speak to it in  
22 terms of a political candidate or political

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1 organization?

2 Q Political committee.

3 A Okay. Because there is a big  
4 difference --

5 Q Okay.

6 A -- in the way we treat them. If it's a  
7 political organization -- and therefore will have  
8 a longer shelf life than a campaign, that would be  
9 only for a cycle.

10 The first thing we do is we sit down  
11 with the organization before we even make a  
12 proposal and try to find out what their goals are.  
13 Are there parameters that they want net dollars?  
14 Are the parameters that they want a certain number  
15 of members?

16 You know, what are their goals?  
17 Depending on their goals, we design a program to  
18 meet those goals.

19 We -- after we present a proposal and we  
20 give a proposal that gives them the full range of  
21 what we're capable of doing, put in the context of  
22 what direct response marketing is about, we then

1 will, after we've signed with them, sit down and  
2 brainstorm and come up with strategies as to what,  
3 you know, their issue goals are, what their  
4 monetary and numeric targets are, and come up with  
5 organizational issues that make sense for them to  
6 be in the mail line that is in keeping with what  
7 they're actually doing.

8 But the client has to tell us a little  
9 about themselves. And then we tell them how we  
10 would position what it is they're about and what  
11 it is they're doing, vis-a-vis to market to an  
12 audience to get them to join on and join in as  
13 members and/or donors.

14 We also put the -- the client through a  
15 complete orientation. We have a handbook that  
16 we've developed -- I believe we're probably one of  
17 few agencies that does this -- and it really gives  
18 them an in-depth idea of what the client-agency  
19 relationship is, what we're responsible for, what  
20 they're responsible for, and really explains it  
21 all out so that they can be a well-informed  
22 consumer.

1 Q So, your company serves as an agent for  
2 the client?

3 A Yes.

4 Q Okay.

5 A Mm-hmm.

6 (Pause)

7 Q Ms. Stone, would you be willing to  
8 provide us with a copy of the handbook that you  
9 referred to?

10 A Sure. Not a problem.

11 Q Okay. Thank you.

12 A Just call Jackie, and she'll have them  
13 Xeroxed for you.

14 Q So, how does the process proceed from  
15 there, in terms of actually doing the work of  
16 developing the direct mail?

17 A Very often, we will send whoever are  
18 going to be the chief leads on the client in to  
19 actually spend time with the client on site --  
20 especially if it's somebody out of the area, we  
21 send them for one or two days -- to actually be  
22 there and watch the people, get to know the

1 people, get to know what it is they're about, to  
2 see what they are actually doing.

3 We've actually gone -- for nonprofits,  
4 we've gone as far away as Africa -- to view what  
5 they're doing, to make sure we are writing about  
6 what they're really doing, because that's a biggie  
7 with us.

8 We have actually fired clients for not  
9 fulfilling on what they tell us they're doing.

10 If we find out and -- we write a package  
11 that says X, Y, and Z, and we find out the client  
12 is not fulfilling, we have actually -- in fact, in  
13 the last year, I cancelled a contract based on  
14 that.

15 Q So, do most of your clients come with a  
16 mailing list already --

17 A It varies.

18 Q -- or how does that work?

19 A We have some clients that come to us  
20 with mailing lists.

21 In the old days, we used to call  
22 ourselves the "agency doctor," because we had a

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1 lot of broken clients that had been broken by  
2 other agencies. And so they'd come to us for a  
3 sort of a healing, where we'd get their program up  
4 and restore their faith in direct-response  
5 marketing.

6 Q Okay.

7 A We've seen a lot of clients abused by  
8 their agencies.

9 And beyond that, beyond the research  
10 part -- because I actually didn't complete your  
11 question, your earlier question -- after we go  
12 through the research and orientation, we'll go  
13 through a brainstorming phase, where we, again,  
14 try to figure out the best positioning for the  
15 issues.

16 Then someone will be assigned to write  
17 copy. We'll actually do out a schedule of the  
18 mailings.

19 If they have a house file already,  
20 direct file already, we'll schedule what the  
21 mailings are going to be for that year, assign  
22 somebody to be writing the copy, set up deadlines

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1 for the client.

2 If it is prospecting, our list company  
3 that we work with will do the research to figure  
4 out what lists will be appropriate to go to, in  
5 coordination with whoever is on the account.

6 And we would plan out a schedule. And  
7 we'd then meet with the client through what we  
8 think their initial phases should be. Sometimes  
9 that's a company with charts that project out what  
10 we think.

11 A possible scenario could be based on if  
12 we have had client experience in that area before.  
13 If not, we tell them, "We can give you a generic  
14 chart that may show you what others have been able  
15 to achieve, but we can't obviously guarantee any  
16 results," because it's not their track record.

17 Q Okay. You mentioned a house file --

18 A Mm-hmm.

19 Q -- and a prospecting list.

20 A Right.

21 Q Can you tell me the difference?

22 A Sure. In direct mail, there are two

1 types of mailings, or -- if you have a candidate  
2 or an organization, there can be three types.

3 And I'll describe all three, assuming  
4 that a political organization might do the third.

5 First --

6 Q But I need you to slow down a bit.

7 A Okay. Senator Heinz, John Heinz, now  
8 deceased, once told me I talk faster than any  
9 human being he had ever met, so I will try to  
10 restrain myself.

11 Q Okay.

12 A The first house file or donor mailings  
13 are to people who have raised their hand once,  
14 have at least indicated a willingness to  
15 participate.

16 We do household mailings to both people  
17 who have given money and we do conversion house  
18 file mailings to people who have not given money,  
19 but have responded with the support, but aren't  
20 giving at that time. So, we try to convert them  
21 to donors. And those, again, are people who have  
22 already given.

1           Prospecting is like prospecting for  
2 gold. You know, you go out there into the unknown  
3 and, with our services, try to target and minimize  
4 your risk in locating the people that are likely  
5 to support your organization either as volunteers,  
6 as donors, as members -- support in whatever way  
7 you need them to support you.

8           The third kind of mailing -- which can  
9 be either, or it can be a combination of the first  
10 two -- is voter contact, where you go out and  
11 design programs that aren't necessarily to get  
12 money or to get volunteers per se, but motivate  
13 people to vote one way or another. And we do put  
14 that in a separate category.

15           Q     Okay. So when a new client comes in, is  
16 the first mailing always a prospect mailing?

17           A     Not if they have a house file. If they  
18 already have a house file, the first mailing might  
19 likely be a house file mailing, because going with  
20 a new message to an audience you have reached,  
21 very often, is the best way to go, because you can  
22 judge, based on how the house file has performed

1 on other issues, whether or not that issue is  
2 going to be a really to prospect with.

3 If the client has an accelerated  
4 schedule and they really want to move quickly, we  
5 may do a combination of house file and prospect at  
6 the same time, and do a variation on the approach  
7 or the issue, one version for house, one version  
8 for prospect.

9 If we have our druthers and we have  
10 time, we always like to test issues on the house  
11 file, because if it doesn't work to their already  
12 proven donor base, it's not likely when we go out  
13 in the mail to the prospects.

14 (Discussion off the record)

15 BY MS. LIGON:

16 Q Ms. Stone, where does your company get  
17 the lists that it uses?

18 A We have a couple of lists that we've  
19 bought over the years. Most of our lists -- 99.9  
20 percent -- we rent through what you call list  
21 brokers. And in this country, there are well over  
22 440,000 individual lists that are available.



1 Put that in contrast with Britain, which  
2 probably, if they have -- if they're up to 25,000  
3 I'll be surprised; or France, where they have  
4 zero; or Germany, where I think they also have  
5 zero.

6 In this country, they are available, and  
7 list brokers are like stockbrokers. Stockbrokers  
8 know what the best stocks are; list brokers know  
9 what lists work are working. Because if you went  
10 by people's descriptions of lists, you'd think all  
11 the lists were great. The proof is in the  
12 pudding.

13 Q Okay. I'm sorry. Did you say your  
14 company owns these lists or has rented these  
15 lists?

16 A No, very few do we own that we have  
17 bought or have been given to us. 99.9 percent we  
18 rent.

19 Q Do you have your own or does your  
20 company use a particular list brokerage?

21 A We have used more than one, but  
22 primarily we use Capstone Lists, which I do have

1 an interest in. And we make that very up front  
2 with the clients. The client understands that  
3 when they sign the contract.

4 I'll tell you my two corporate  
5 philosophies.

6 One is "you get what you give," so you  
7 treat the client the way you want to be treated.  
8 Hopefully, it goes the other way, too.

9 And the second thing is "no surprises."  
10 So we try to make sure the client is always kept  
11 very well informed.

12 Q Okay. Which aspects of the process of  
13 providing direct mail services does Ann Stone and  
14 Associates do in-house?

15 A In the old days, I would tell you that  
16 we only did creative and production brokering list  
17 consultation.

18 Q Yes.

19 A We now -- besides doing strategy and  
20 concept development, we do the creative -- meaning  
21 the writing of the copy or designing of the ads,  
22 designing of the graphics.

1 We also do list consultation and  
2 production coordination.

3 We do actual production on very small  
4 mailings. If we bid it out and we find out that  
5 everybody out there is horrendous price-wise, we  
6 will do some -- when I say "small," I mean really  
7 small quantities of under 3,000 for highly  
8 personalized packaged.

9 We don't like to do it, but we'll do it  
10 when it becomes cost-prohibitive to go outside.  
11 We do not believe it only means production,  
12 because we believe if you only mean production,  
13 that dictates what kind of packages you design for  
14 your client, and that therefore does not service  
15 their interests.

16 It services your financial interests,  
17 because you design a package that keeps your  
18 machine running, as opposed to what's best for the  
19 client.

20 Q Okay. So what parts of the process are  
21 done by a third-party vendor?

22 A The list-brokering --

1 Q Yes.

2 A -- is done by the list broker. The  
3 production, actual printing, usually the  
4 personalization, the mail shopping, affixing the  
5 stamps, the actual mailing process itself, we  
6 oversee, we have checkpoints, we have quality  
7 procedures. We have to make sure it's done  
8 correctly.

9 But all of that is done -- and also the  
10 processing of the money when it comes back -- is  
11 done by outside sources.

12 Q Okay. And so, with respect to obtaining  
13 all of these services that are done by the  
14 third-party vendors, do you act as the agent of  
15 your client?

16 A Yes, we do.

17 Q Okay. And is it a usual practice in the  
18 industry for the direct mail company to act as an  
19 agent of the client?

20 A Yes, it is.

21 Q Does your company require up-front  
22 payments?

1           A     It all depends. Again, if you'd asked  
2 me this years ago, no. We would have gone just  
3 for up-front payments for postage and/or possibly  
4 lists.

5                     In these days, after you've been burned  
6 by several political campaigns, when it is a  
7 campaign -- a candidate, we generally require  
8 up-front.

9                     If it is an organization, we will still  
10 arrange for credit.

11                    Sometimes, depending on their history --  
12 and we go into their credit history -- we may  
13 allow them to get credit with our vendors for the  
14 first couple of mailings and see.

15                    If they pay their bills, then we can  
16 continue that way. Otherwise, we'll demand  
17 up-front.

18                    If their credit history is shaky and  
19 they can't provide good references, then we do ask  
20 for payment up front so they can establish credit  
21 with the vendors.

22                    And usually we don't ask for our fees up

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1 front, but we ask for payment for printing and  
2 mail shopping.

3 And of course they have to pay postage  
4 up front. I haven't figured out a way to get the  
5 post office to give us credit yet. I'm working on  
6 that.

7 Q So you said they pay postage up front,  
8 and they pay --

9 A Usually the list costs have to be  
10 paid --

11 Q Okay.

12 A -- up front, especially for political.  
13 But past that, if they have some credit history,  
14 we may allow them to get credit if they fill out  
15 credit applications and pass muster.

16 Q Okay. And so if it is a new, say,  
17 political committee --

18 A Mm-hmm.

19 Q -- then would you normally require  
20 up-front costs or --

21 A We ask them to try to raise seed money  
22 of a certain amount that could be escrowed and put

1 any potential losses early on in the mailing,  
2 unless there are very unusual circumstances.

3 If it was somebody beyond reproach who,  
4 you know, was known for their integrity and had  
5 never stiffed anybody in their lives, we probably  
6 could get our vendors to extend them credit.

7 Q Yes.

8 A We're real careful about that.

9 Q Okay. Does your company advance  
10 payments to the third-party vendors?

11 A Not for a political organization. That  
12 would not be usual.

13 Q You mentioned how, with new committees,  
14 you try to get them to develop some money in an  
15 escrow account?

16 A Yes.

17 Q Would that something that is usually  
18 done in the industry by --

19 A I think it's becoming more usual.  
20 Again, if the people involved can't inspire people  
21 to raise seed money, even if it's as a loan and  
22 not an out-and-out gift, then you kind of wonder

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1 if they're really viable.

2 (Pause)

3 Q How are billings by the third-party  
4 vendors handled?

5 A Generally speaking, if it is an  
6 organization, we usually ask that they bill  
7 directly to the organization.

8 There are some organizations that beg  
9 and plead with us to have the stuff billed through  
10 us, because they'd rather just write one check to  
11 us and have us check all the bills and all that.

12 But in the interest of being open and  
13 honest, we generally want them to get the bills  
14 directly to the vendors so they can see that  
15 there's no markup.

16 And there have been a few contracts  
17 where the client has actually said, "We'd rather  
18 pay you as a part of the markup."

19 So, obviously, there are extenuating  
20 circumstances.

21 Generally speaking, the political  
22 organization would much rather have them do what

1 is called "direct billing" and bill directly so  
2 they can see that here are the invoices, here are  
3 the vendors, and this is the deal.

4 We also give them our bid sheets so they  
5 can see who we bid to and what the competitive  
6 pricing was and why we chose what we chose in  
7 terms of the vendor.

8 (Pause)

9 I get some clients, in fact, that say,  
10 "Enough with the information," because we give  
11 them so much. But I would rather start out that  
12 way.

13 And if they're not comfortable handling  
14 everything and they get overwhelmed, then we don't  
15 boilerplate. The way we do it with a client is we  
16 tailor and fit what their needs are as an  
17 organization.

18 Q So that either way, either directly to  
19 the client or through your -- the company --

20 A Mm-hmm.

21 Q -- would be usual practices --

22 A Yes.

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1 Q -- in the industry?

2 A Mm-hmm.

3 Q Okay. How are the returns from direct  
4 mail solicitations processed?

5 A We contract with an independent caging  
6 option if the client doesn't cage it themselves.

7 And again, depending on the client and  
8 what we know about them, we determine whether or  
9 not we would insist upon an escrow or we would  
10 allow them to cage it.

11 If they have a track record and they're  
12 a big organization -- we don't ask the Republican  
13 Party to hire a caging operation if they don't  
14 want to.

15 Actually, all their caging is done now  
16 outside because of the volume. But, you know, it  
17 varies.

18 But, you know, the key is that we don't  
19 touch the money. I believe it's extremely  
20 unethical for an agency to receive funds back to  
21 the agency that has to go to a third party.

22 (Pause)

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1 Q Well, is "caging" the same as an escrow?

2 A Thank you. I should explain that.

3 "Caging" is a term that harkens back to that days  
4 when they used to have people in smocks in  
5 chicken-wire cages, where they could watch them  
6 open the mail and process the mail. That's where  
7 the term "caging" actually comes from.

8 "Caging" is the process of actually  
9 opening, counting up the money, depositing, and  
10 tallying what has come in.

11 (Pause)

12 Q So it is the same thing though as a --  
13 okay. Yes, okay.

14 So does -- is the escrow agent, is that  
15 the person or entity that pays the invoices?

16 A Generally speaking, yes.

17 Q When is that not the case?

18 A There could be a case where an escrow  
19 agent, if a client had an operating fund, they  
20 wouldn't -- well, the invoices from the mailing,  
21 yes. The escrow agent generally is responsible  
22 for the invoices specifically from the mailing.

1 They won't usually pay all of the client's bills.  
2 But those associated with the mailing program.

3 Q Okay.

4 A And then any -- they would then transfer  
5 any money that's pre-agreed upon to go to the  
6 client's operating fund.

7 (Pause)

8 Q Who determines the order of payments to,  
9 for instance, the third-party vendors and to the  
10 agency and then back to the client?

11 A Depending on the relationship of the  
12 client, sometimes the client wants us to give them  
13 guidance. But generally speaking, it is the  
14 client's money. The contract might spell out some  
15 order of payment.

16 We generally defer. And we get paid  
17 last. So, usually it's the immediate vendors who  
18 have done that particular mailing, then our fees,  
19 then any net profit.

20 Could --- the client could deem to go  
21 back to them for operating or stay in the kitty  
22 for -- as a revolving fund for its future

1 mailings.

2 Q Let me back up for a minute.

3 A Mm-hmm.

4 Q Who holds the funds in the client's  
5 operating fund?

6 A Generally, the escrow agent is the one  
7 who controls the -- oh, the operating fund. I'm  
8 sorry. I misheard.

9 The operating fund is the client's  
10 business. The client holds the -- wherever they  
11 want them. It's their money.

12 (Pause)

13 Q Okay. So, you said that in terms of the  
14 order of payments, the vendors are paid first  
15 generally?

16 A Mm-hmm. Vendors for that particular  
17 mailing are paid first, yes.

18 Q Okay. And then the agency? And then  
19 the rest goes to the client?

20 A Right. Or, you know, depending on the  
21 client, may want to leave it in the fund if the  
22 fund is where the next round of postage would come

1 from or whatever.

2 But if you have house file and prospect  
3 money in the escrow, then there should be an  
4 amount that goes to the client, because they  
5 should be receiving money from the house file.

6 Q Okay. What happens if there's not  
7 enough money coming into the fund to pay all of  
8 the vendors, for instance? How do you determine  
9 which ones get paid first? And --

10 A There's two things on that. That's one  
11 of the reasons that we now are asking the clients  
12 to raise seed money, to show their viability.

13 And we're asking them to assume  
14 underwriting the costs of the first mailing to  
15 minimize the risk to the vendors.

16 But the second way is you can sometimes  
17 discuss with the vendors -- first of all, we would  
18 probably wait on our fees.

19 And you can discuss with the vendors if  
20 they're willing to hold back and wait maybe  
21 another 30 days for payment so that the client  
22 would have a chance to mail the house file names

1 or we ask the client to go out and raise the money  
2 from whatever sources.

3 Q And what would be the reason that the  
4 agency would wait on their fees?

5 A Just because we feel sort of a shared  
6 responsibility with them, sort of a partnership  
7 with the client as we build the list.

8 And we expect to be paid -- don't get me  
9 wrong, but sometimes we won't wait. I've become  
10 less tolerant in my old age, though.

11 (Pause)

12 Q But when the invoices aren't being paid,  
13 is there some point when all the returns will be  
14 used to pay the vendors, and none will go back to  
15 the client?

16 A There have been instances where the  
17 client has suggested that as a way of getting  
18 vendor bills paid down, because that is a  
19 responsibility, and it's not good to be stiffing  
20 these people.

21 But, you know, I believe it's mail fraud  
22 if you say you're going to write on a program and



1 you get people to send you money, and it says  
2 you're going to do X, Y, and Z, and then no money  
3 goes for that program --

4 And this is something I've discussed  
5 with vendors before -- in fact, I had a  
6 discussion, not too long ago, with a vendor who  
7 wanted more money on something, on an old debt for  
8 a client.

9 And I explained to him, "Well, the  
10 client needs the money for this program. And  
11 unless you want to pay for a mailing to go to the  
12 donors and say, 'Oh, we didn't -- we lost money,  
13 so therefore we're going to take all your money  
14 and send it to this vendor.'"

15 I'm not going to commit mail fraud, and  
16 so therefore this money will go to a program, and  
17 you're going to have to agree to wait a little bit  
18 longer for money, because we can't be writing  
19 about things that they don't do. I feel very  
20 strongly about that.

21 Q So at what point would you stop?

22 A At the point that the client would agree

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1 to mail only on debt reduction, so every piece  
2 that went would basically say, "We got ourselves  
3 in over our head. I need you to send money now  
4 that will just go to pay down debt. We're very  
5 sorry that we got ourselves in that predicament."

6 But at the point the money is going to  
7 go for that, then that's what you should say the  
8 money is going for.

9 Q Does your company have a standard  
10 contract that it uses?

11 A Mm-hmm.

12 Q Okay. And would you be willing to  
13 provide it --

14 A (Inaudible response)

15 Q We need a yes or no.

16 A Yes.

17 Q Okay.

18 A We provided it to the State Attorney  
19 General, so I have no problem providing it to you.

20 Q Okay. In your company's contract, is  
21 there a provision at all that says that if  
22 invoices aren't being paid, then at a certain

1 point the money will be -- all of the money on the  
2 returns would go to --

3 A No, no, no. We have two provisions.  
4 One is we get to charge you interest. Two is we  
5 have a right to terminate. And actually, there's  
6 a third, and that is we have the right to  
7 terminate. And if you try to do us out of the  
8 money and dispute and whatever and we have to go  
9 to court to litigate, we can recover our costs --

10 Q Okay.

11 A -- in litigation.

12 Q Okay. So, I guess what I need to know,  
13 then, is at what point -- maybe I've asked this,  
14 but at what point would you determine, then, if  
15 the invoices aren't being paid?

16 A We would not allow it to get too far  
17 into debt. That -- that is -- that is not  
18 something that can be precisely answered, you  
19 know, that it would be "X" number of months at --  
20 while I'm sitting here today, thinking -- I'm  
21 trying to think. We have a standard.

22 You know, if we got three to six months

1 out in mailings and things really weren't working,  
2 at that point I would say to them, "Listen,  
3 obviously we have not been able to figure out to  
4 position."

5 We certainly wouldn't let it go more  
6 than a year to 18 months.

7 I mean, if, at that point, you haven't  
8 found a prospect piece and positioned it to work,  
9 it's not going to work.

10 Q Okay. Would you say that that's the  
11 usual time frame for terminating --

12 A I would be surprised of (sic) any  
13 organization or any agency that would keep a  
14 client on for more than a year, year and a half if  
15 they have not been able to find anything that  
16 works. There are rare instances where that has  
17 not been the case.

18 But if the client -- I'm presuming, in  
19 saying this, too, that they have no house file.  
20 If they've come in with no house file, to extend  
21 it much past a year to a year and a half tops, it  
22 would really be fiduciary irresponsibility.

1           If they have a house file and you have  
2 another means for recovering costs, then -- and  
3 the client has agreed to make the investment and  
4 continuing to find a way to position, then it  
5 makes sense.

6           A case in point would be somebody like  
7 the National Taxpayer -- National Tax Limitation  
8 Committee, NTLC. Back in the '70s, it did take  
9 about two or three years before they found the  
10 position. But they didn't run them way into debt  
11 while they were doing it. And when they found  
12 something, they hit it really big.

13           Q     Okay. So, over the year to the year and  
14 a half that your company would continue to try to  
15 find a list that works, how many mailings would be  
16 done in that period, would you say?

17           A     We probably do -- and this is why it  
18 usually doesn't take us that long. Our normal  
19 scenario, when we set up a test, is we tell the  
20 client, if they can, we would prefer that we take  
21 more than one approach the first time in the mail.

22           Q     Yes.



1           A       So, you have two different packages  
2 developed. We tell them we need between 25 to  
3 35,000 names apiece, so a mailing of 50,000 to  
4 70,000, to be able to test lists in their markets,  
5 as well as test the two different approaches.

6                   The reason we recommend that, we  
7 recommend if they can go to three approaches, even  
8 better.

9                   But if you have two different -- really  
10 different approaches and you're testing the  
11 markets you think your market research shows are  
12 going to work for this issue, that some  
13 combination therein, some combination of message  
14 and market, if it doesn't hit, then we generally  
15 would be able to tell them very early -- and that  
16 would be within three months -- that maybe we  
17 can't make this work.

18                   That's why, again, two to three series  
19 of mailings -- if, in two to three series of  
20 mailings, which can take up to a year --

21           Q       Okay.

22           A       -- by then, you really should know,

1 because you should have tested enough different  
2 approaches, enough different lists and list  
3 markets, that you can tell at that point.

4 And that's why it has to be extenuating  
5 circumstances for us to really go to 18 months  
6 with somebody, again, that doesn't have a track  
7 record and doesn't have a house file.

8 If they have a track record and they  
9 have a house file, that's a whole different can of  
10 worms, because that means at some point they have  
11 made it work.

12 (Pause)

13 Q Okay. So if they did have a house file,  
14 then how much farther out would you be willing --

15 A Well, then you would go to the 18  
16 months --

17 Q Okay.

18 A -- you know, maybe even two years,  
19 depending on the -- if it's a huge house file,  
20 maybe.

21 Q Okay. What factors does your company  
22 normally consider in determining the duration of a

1 contract?

2 A Our contracts generally are open-ended.  
3 They do not have a duration, but they have the  
4 ability to cancel on us very quickly.

5 Some contracts are 30-day cancellation.  
6 Some are 60. The most I think we have are 90, and  
7 that's usually -- I actually have clients who  
8 complain that they want a longer cancellation  
9 clause, which -- don't ask me why -- and 90 to --  
10 I -- we may have one that was 120. I don't think  
11 so, though.

12 I think 90 usually, or even back to 30  
13 to 60, because I believe the client should always  
14 have right to walk away from us.

15 That's another reason I don't believe in  
16 exclusive contracts. I don't ever want our clients  
17 to feel like they're indentured servants. And  
18 I've seen too much abuse, where clients locked  
19 into contracts that, frankly, aren't contracts;  
20 they're prison sentences.

21 So, I think they have to be able to pick  
22 up and walk. This does two things. It makes the

1 client feel more comfortable with the agency, and  
2 it keeps the agency -- keeps us own our toes,  
3 because we know that they can walk.

4 So, our -- our employees know that, too,  
5 so they know they have to perform for the client  
6 or they can leave.

7 Q Okay. So, let me make sure -- could you  
8 just clarify for me exactly what you mean when you  
9 say "exclusive contracts."

10 A We do not sign exclusive contracts. We  
11 never sign as the sole agency.

12 I think, in the history of my company,  
13 in almost 14 years, we may have had one, maybe two  
14 clients that have been exclusive -- that was one  
15 of the things we changed in the marketplace.

16 Because I believe when clients enter  
17 into exclusive contracts with agencies -- and  
18 there are track records to show this -- that they  
19 literally become the prisoner, where the agency  
20 begins to control the client. The agency controls  
21 message, money, and even starts to think of  
22 themselves as being the client and acting like

1 they should control everything.

2 I think it's always best -- and if they  
3 don't do a good job for the client, the client has  
4 no alternative, and they're just locked in. And  
5 that's not good. It's not healthy.

6 Q Which way is usual and normal in the  
7 industry?

8 A In this -- nowadays in the industry,  
9 non-exclusive has become more the norm. The  
10 exclusive has really fallen out of favor, and this  
11 is since about 1985 -- '84, '85. There has been a  
12 radical shift in the industry.

13 Q And with respect to the open-ended  
14 aspect of your contracts, is that usual and normal  
15 in the industry, or --

16 A No. I've seen more with duration than I  
17 have open-ended.

18 I've seen a lot more with longer  
19 cancellation clauses, too.

20 Q Okay. What type of durations have you  
21 generally seen?

22 A On the good side, I've seen durations of



1 -- of one year, no more than three-year.

2 On the bad side, I've seen up to 10- and  
3 20-year --

4 Q Okay.

5 A -- which I think is real abuse,  
6 especially if it's an exclusive contract.

7 Q How does your company's contract provide  
8 for agency compensation? And by that I mean is it  
9 per piece? Is there a retainer? Is it --

10 A Either and both, depending on the  
11 services that they will require.

12 If there's a lot of consultation, we may  
13 have a retainer. Generally, it is a per-piece  
14 with minimums -- certain number of cents per  
15 piece. We range from 4 to 6 cents per piece  
16 usually on prospect and 4 to 6 cents or 5 to 6  
17 cents on house, with minimums ranging -- oh, on  
18 prospect, the minimum usually is about either  
19 2,000 or 2,500 on the house file.

20 If they have no house file, we'll  
21 generally have a clause that says until the house  
22 file reaches "X" number of pieces, our minimum

1 would be very low. It would be like \$500 or \$750.  
2 And after it reaches a certain number of pieces,  
3 it will go up usually no more than 1,500 as a  
4 minimum.

5 Q Okay. Are there any other ways that are  
6 usual and normal in the industry for direct mail  
7 companies to provide for their income?

8 A In commercial agencies in New York, they  
9 do markup on production. That is not usual and  
10 normal for political, however -- for direct mail.  
11 It is for media placement, but not -- not for  
12 direct mail.

13 (Pause)

14 Q What are your agency's fees based on?

15 A Generally, our anticipated level of work  
16 needed for the client.

17 We know what our P&Ls are based on, the  
18 normal -- our profit and loss is based on the  
19 normal activity on a client that's new.

20 And generally, again, familiarity with  
21 the issues, the availability of personnel.

22 If we're in a crunch period where we're

1 very short-handed and somebody really wanted to be  
2 a client, we take them in at where people are  
3 going to work overtime and people have to hire  
4 additional personnel, that could affect the way we  
5 bill.

6 Q Just for clarification, again, when you  
7 use the term "profit," what are you referring to?  
8 When you refer to "profit" --

9 A Mm-hmm.

10 Q -- what do you mean?

11 A The agency's profit and loss on a given  
12 client -- from a fee standpoint.

13 In other words, what the agency's actual  
14 costs are versus what we bill on a particular  
15 client, we can tie that down to jobs and back to  
16 clients.

17 So, we know -- all of my employees keep  
18 time sheets on how many hours they spend on  
19 clients every day.

20 And those are tallied. And our  
21 accounting system has the ability to show, based  
22 on the number of hours versus the number of

1 dollars billed, whether the client is profitable  
2 for us or not. And at that point, we may choose  
3 not to go on with the client at a certain point if  
4 they're consistently a problem, where we're not  
5 making any money.

6 Because you get some clients -- the ones  
7 who pay you the least are usually the ones that  
8 take the most time. It's Murphy's Law in billing.

9 Q Okay.

10 A And the ones that pay you the most  
11 generally take no time at all. They're  
12 sweethearts.

13 Q So, your profit is built into your fees  
14 then?

15 A Mm-hmm.

16 (Pause)

17 MS. LIGON: I'd like to take about a  
18 five-minute break.

19 (Recess)

20 BY MS. LIGON:

21 Q Ms. Stone, I just need to ask you at  
22 least one more question about profit, just to be

1 sure that I understand.

2 A Okay.

3 Q What are the elements that go into  
4 calculating profit? I mean, is it costs? Is  
5 there another amount for overhead, and then  
6 there's a separate amount for the agency's profit?  
7 Or how does that work?

8 A Well, agency fees, as opposed to the  
9 cost -- if, you know, a letter is being printed by  
10 a printer, that's obviously a separate cost.  
11 That's not part of our fees.

12 But agency fees -- it would be  
13 computation of the fixed GNA, general  
14 administration costs, and salary -- the variable  
15 of how much time and salary we would go into based  
16 on the timelines.

17 And the profit margins, therefore, move  
18 up and down based on if you're spending a lot of  
19 time on that that client that month, the P&L would  
20 be lower than another month, where you could have  
21 a big mailing going out, but for whatever reason  
22 you haven't had to spend a lot of time on it.



1           There's a lot more cost in the test  
2 phases for a client. Once the client's program is  
3 up and running, that's gravy, because usually it's  
4 very smooth at that point. There's not a lot new  
5 that has to -- has to go on.

6           That's why a lot of contracts and a lot  
7 of clients that are intelligent ask for sliding  
8 scale, so that the more pieces you mail, the lower  
9 your fees are. Because they recognize that after  
10 a certain point -- and that's why we have  
11 minimums, because that's how we recover our fixed  
12 cost on the initial round.

13           And after that, we're willing to  
14 negotiate sliding scale on fees on the per-piece  
15 fee, because the more you mail of a given, unique  
16 package, the lower your -- your cost is going to  
17 be and therefore the larger your profit margin.

18           Does that make it clear?

19           Q     Is there a percent of profit margin that  
20 you normally calculate?

21           A     I just like to have a profit. No, we  
22 don't -- we don't have a profit margin per se,

1 that we say, you know, 15 percent profit margin or  
2 whatever. We don't.

3 I would say though, roughly, over the  
4 life of a project, when we go back and analyze how  
5 much we've billed versus how much they have raised  
6 our total billings for fees, this is not the cost  
7 of mailing, it should never exceed 10 percent for  
8 the actual agency fees over the entire life of the  
9 program.

10 All right. You know, maybe it has gone  
11 up to 12, but past that would be extremely  
12 unusual.

13 Q Okay. Let me back up just a moment.  
14 You talked about having clients -- political  
15 clients raise seed money.

16 A Mm-hmm.

17 Q And you said that -- I believe you said  
18 that that is becoming a usual and normal practice  
19 in the industry --

20 A Mm-hmm.

21 Q -- is that correct?

22 A It is becoming more of a -- a usual

1 practice, because agencies want to be able to have  
2 clients that have viable.

3 Q At what point, generally, did that  
4 become more of a usual practice?

5 A I would say after '85, '86, it started  
6 becoming more usual.

7 (Pause)

8 Q Okay. And with respect to sending out  
9 mailings that actually say that these -- you're  
10 requesting the solicitation to reduce the debt of  
11 the client, is that a usual and normal practice?

12 A Debt-reduction mailings are things that  
13 are usual and normal when a client has a debt --

14 Q Okay.

15 A -- because if that's what the money is  
16 being spent on, that's what they need to say.

17 (Pause)

18 I mean, isn't it mail fraud if they  
19 don't? I think it is.

20 Q Earlier, you mentioned that exclusive  
21 contracts are sometimes like prison sentences.

22 A Mm-hmm. Or -- or like indentured

1       servitude.

2               Q       Can you elaborate on what you mean?

3               A       Well, if it is an exclusive contract,  
4       and it has a term of duration, and it has an  
5       extremely long termination clause, what that  
6       basically does is, it gives the client no option.

7               They are -- they are wedded, for worse  
8       or for worse, to that agency. And they have no  
9       ability, because the agency usually, under those  
10      terms, also controls the list for the term of that  
11      contract.

12              And in many cases, it owns -- co-owns a  
13      copy, which is also we do not believe in. We do  
14      not believe in co-ownership of the names. That's  
15      another thing I've crusaded against.

16              And if -- if they control the client's  
17      message getting out and they control the client's  
18      resource of the list, they control the client.

19              And unless the client has incredible  
20      independent financial means -- and where they can  
21      hire the talent to come inside and do it on their  
22      own -- that's usually the only way you can get

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1 around exclusivity, is to do it within the client  
2 itself, because you can't go to any other agency.

3 Q Couldn't the client just terminate the  
4 contract?

5 A Usually exclusive contracts have the  
6 ability to terminate is -- is hindered two ways.

7 One, you have a lock termination period.  
8 I've seen -- in this town, there are a couple of  
9 agencies that come to mind that have had  
10 termination clauses of 150 days or more.

11 And the other thing is that generally  
12 all debts are due and payable right then and  
13 there.

14 And a lot of the exclusive contracts,  
15 the agency has so much control that very often  
16 it's in -- it's in the agency's interest -- and  
17 the incentive is there -- for the agency to abuse  
18 and to get the client into debt, because then the  
19 client can't cancel. Because then they have a  
20 huge debt that is owed and payable right then.

21 And if they try to walk away, the agency  
22 will go after them and will put a lien against any



1 money that they're raising. It does become a  
2 prison sentence.

3 Q I'm going to follow up on that a little  
4 bit later.

5 A Mm-hmm.

6 (Pause)

7 Q Okay. With respect to a client's  
8 fund-raising program --

9 A Mm-hmm.

10 Q -- what is considered income for the  
11 company?

12 A Income for the organization or for the  
13 agency?

14 Q For the agency.

15 A Generally -- you mean income that can be  
16 counted to be used to pay the agency?

17 I need a better definition of "income."

18 Q I guess -- well, if you -- when you  
19 refer to income --

20 A Mm-hmm.

21 Q -- what do you mean?

22 A Well, there are two types. There's

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1 income that comes into the program for the  
2 program -- actually, there are three types.  
3 Sorry.

4 There's income that goes to the client,  
5 and there's income that goes to the agency. What  
6 I generally would think of is the income available  
7 to pay for the program, unless it's specified  
8 otherwise.

9 Most agencies will have contracts. And  
10 the usual thing is that it's the proceedings from  
11 the mailings that pay for the program.

12 Like I said, with us, we don't  
13 necessarily tie it just to that. Very often, we  
14 will say, you know, you may be responsible for  
15 raising money from other sources.

16 Q You mentioned that your company doesn't  
17 co-own lists with the clients.

18 A Right.

19 Q But for companies that do co-own lists,  
20 would -- do you think that they would consider the  
21 amount of money they might get from co-owning the  
22 list as income from the client?

1           A     No. It generally wouldn't be income  
2 from the client if they co-own a copy. Well, it  
3 depends on the terms of the co-ownership.

4                 Some terms of co-ownership allow for the  
5 agency to be renting the names for themselves  
6 during the term of the contract.

7                 Most co-ownerships say they can't rent  
8 for themselves until the end of the contract. So,  
9 therefore, any rentals during the term of the  
10 contract would be income to the client, not to the  
11 agency.

12                If it specified that the agency can rent  
13 on their own, can use the names and rent -- you  
14 know, rent independently of the client, then that  
15 would be independent income. That's real income  
16 not tied to the contract for the agency,  
17 independent compensation.

18           Q     If the contract specified that the  
19 client --

20           A     Mm-hmm.

21           Q     -- couldn't use the list, but the  
22 agency --

1 A Except for itself. It --

2 Q During that program.

3 A Right.

4 Q But that the agency --

5 A Could use it for any means or purpose.

6 Q Co-own the list. And --

7 A And use it for any purpose, yes.

8 Q And would that -- the income resulting  
9 from that be considered income resulting from that  
10 client or relationship with that client?

11 A We wouldn't book it that way. I  
12 wouldn't see why it would, because that then  
13 becomes an asset of the agency's that's no -- you  
14 know, if that -- and the income would be from that  
15 asset to that agency.

16 Q Is that the way it would normally be  
17 done in the industry, you think?

18 A I would think so. I mean, I -- I can go  
19 how we're booking it. I haven't been privy to  
20 agencies accounting, you know, to their books.

21 I'm trying to think of how Viguerie used  
22 to do it.

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1 (Pause)

2 No. Most of his co-ownership, as I  
3 remember it -- and remember, it has been 14 years  
4 -- that would be income to the agency. It  
5 wouldn't have been income to the client.

6 Q Okay. Just to clarify, it would be  
7 income to the agency not resulting from the  
8 client, just something separate.

9 A Okay. Obviously, it indirectly results  
10 from the client, but it is not -- it would be  
11 booked as independent income. It would not be  
12 booked to something the client generated or the  
13 client's program generated.

14 (Pause)

15 Q Okay. In the direct mail industry, how  
16 did you determine when there has been a loss? Do  
17 you determine it on a per-mailing basis or --

18 A We look at it both ways. We look at it  
19 mailing by mailing, project by project.

20 I was going to give a flip answer and  
21 say when there's not enough money to pay bills.

22 But that's not true. We -- we have --



1 and we know there has been a loss.

2 Or the old joke: I can't be overdrawn,  
3 I still have checks left. Yeah.

4 But the -- we look at it project by  
5 project, and then you look at cumulatively as  
6 well. Because very often some projects will lose,  
7 some projects won't, and then overall there will  
8 be a net gain for the client, or at least break  
9 even. But we look at it both ways.

10 Q Okay. So this may take you back to your  
11 flip answer, but what would you consider a loss?

12 A Anytime that the up-front costs for the  
13 mailing are not matched by income coming in off of  
14 that mailing.

15 There are some people and some clients  
16 that require that we also factor in back-end  
17 costs, okay, into -- as part of the up-front.

18 Now, let me define that. "Up-front" is  
19 postage, lists, agency fees for or specific to  
20 that mailing, production costs of printing, mail  
21 shop, computer work -- you know, all that. That's  
22 up-front. That's everything that takes you into

1 -- putting the mail into the mail trucks and  
2 trucking it to the post office. That would be  
3 up-front.

4 Back-end is the caging costs, the costs  
5 of thanking them -- okay, the keypunch costs to  
6 actually put the names into the data base. All  
7 right, that's the back-end.

8 It has become more usual and normal,  
9 more and more, that to responsibly administer the  
10 program you've got to look at both.

11 But for the purposes of list-building,  
12 generally the up-front costs are what's generally  
13 considered in calculating a profit and loss.

14 At a point in the program, whether it be  
15 six months or a year, you've also got to look at  
16 what your back-end is costing you, too.

17 Q Okay.

18 A And usually the back-end costs should  
19 not exceed -- let's see if I can make this clear.

20 If the up-front cost is 40 cents per  
21 letter mailed, and that's all costs included.  
22 With political, these days it's between 40 to 50

1 cents, because the costs have just accelerated and  
2 we don't mail at a subsidized postage rate.

3 Your back-end cost, if you look at it on  
4 per letter mailed out, as opposed to the number of  
5 responses in and looking at the costs just on  
6 those responses -- but when you amortize it across  
7 the cost of per letter out initially, it should  
8 not exceed 2 cents per letter out. All right.

9 Q And would you say that that's usual and  
10 normal in the industry, or --

11 A Responsible agencies look at both. They  
12 look at the front-end and the back-end. But for  
13 the purposes of planning, to go forward with the  
14 program, they generally look at profit and loss  
15 just on the up-front.

16 Figuring the back-end cost is more of a  
17 cost of doing business. But we have to look at  
18 it, too, to make sure that those costs are  
19 exorbitant and therefore it doesn't drag the whole  
20 program down.

21 (Pause)

22 Q Okay. And what would 2 cents per letter

1 be?

2 A Well, if we mail 10,000 pieces, and  
3 you've got a 2 percent return -- is that -- my  
4 math is bad today. 200 -- that would be 200,  
5 right -- yeah -- and 10,000.

6 The 10,000 cost to put them in the mail  
7 costs, say, 45 cents a piece. Those 200 pieces,  
8 the cost to create a thank you letter, pay for  
9 that, put it in the mail, to keypunch that name  
10 and put it into the data base, and the cost of the  
11 initial opening of the envelope and processing of  
12 the money, all right, all that together could be  
13 another -- could be 60 or 70 cents a piece.

14 So you take 100 times the 70 cents  
15 apiece and divide it by the initial 10,000. Okay.  
16 That figure should not exceed 2 cents. If it is  
17 -- if it is, then your back-end costs are out of  
18 whack.

19 I have one client that, when we took a  
20 look at their program, their backend costs were 10  
21 cents apiece. And I went, "Ha ha, five times what  
22 they should be." So, we had to work on finding a

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1 way to streamline that for them.

2 Q You mentioned that it's becoming more  
3 and more usual and normal to consider the cost at  
4 both ends.

5 A Mm-hmm.

6 Q At what point would you say that it  
7 became usual in the industry to do that?

8 A For some people it was always usual. It  
9 has become more prevalent -- probably in the last  
10 10 years.

11 (Pause)

12 Q I want to talk about co-ownership of  
13 mailing lists.

14 A Mm-hmm.

15 Q You mentioned that your company doesn't  
16 co-own mailing lists.

17 A Right.

18 Q Is it a usual and normal practice in the  
19 industry for direct mail companies to co-own  
20 mailing lists?

21 A I'm proud to say that I think our -- our  
22 agency led the way in making it less usual.

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1 And, in fact, today it has now become  
2 more unusual, because clients have become more  
3 educated and generally do not allow co-ownership.

4 Q Okay. And when would you say that it --

5 A Again, about the last 10 years. There,  
6 again, are some clients that are willing to give  
7 that up. And sometimes it is a trade-off for  
8 other things the agency can do.

9 But clients have come to understand  
10 their list is usually their greatest asset, and it  
11 can be abused if they allow co-ownership.

12 Q Okay.

13 A And most of those agencies in town that  
14 are considered the best don't co-own.

15 Q Okay. Ms. Stone, what all does  
16 co-owning a mailing list entitle a direct mail  
17 company to do?

18 A It entitles them to take those names and  
19 then use them for other clients, often other  
20 clients that are on like issues, so that they are,  
21 pardon my language, bastardizing the names and  
22 really abusing the donors, because they've got

1 this additional information on these people that  
2 they've responded to this issue or that issue.  
3 And then they can go out to a whole host of other  
4 clients.

5 And they also have more unique  
6 information on these people than you get in a  
7 regular commercial broker arrangement. Because  
8 usually when you go out and rent outside lists,  
9 you can't get specific dollar amounts per the  
10 name.

11 So, you'll know everything about that  
12 person, how many times they give to the client,  
13 what the dollar amounts were, which appeals work  
14 best, which techniques work best. And that is  
15 something you cannot find out in a regular  
16 commercial brokerage situation.

17 And it does allow them -- I had a client  
18 that I inherited in '82. The agency, to get back  
19 -- they were so mad that this client left -- they  
20 took just the \$100-plus names out of their file  
21 and rented them over and over and over to anybody  
22 who wanted them, to try to kill those names -- I

1 mean, literally to mail them to death so that they  
2 wouldn't be any good for the client that had left  
3 them.

4 Q Yes.

5 A So, that's a -- a clear-cut example of  
6 what could happen.

7 (Pause)

8 Q Okay. So what, actually, are direct  
9 mail companies gaining, themselves, from co-owning  
10 a list?

11 A Lots of money.

12 Q Oh.

13 A I mean, just as it is the greatest asset  
14 for a client, likewise it's extremely lucrative  
15 for the agency. Because in a list-rental  
16 situation, the agency makes 80 percent profit  
17 every time that name is rented.

18 That's a nice profit margin, wouldn't  
19 you say, 80 percent? A little higher than the  
20 normal profit margin.

21 (Pause)

22 Q So if a company is co-owning a mailing

1 list with a client --

2 A Mm-hmm.

3 Q -- and is using the list for other  
4 clients, then, in effect, they're hurting the  
5 client --

6 A Mm-hmm.

7 Q -- is that right?

8 A I believe that is correct --

9 Q Okay.

10 A -- because they have the ability -- it  
11 isn't because other people mail that list, because  
12 the other people mailing the list is not the  
13 problem. It's the fact that the agency has unique  
14 information about those donors that wouldn't be  
15 otherwise available in a normal list exchange.

16 Q Does co-owning -- does a company's  
17 co-ownership of the list automatically entitle the  
18 company the right to rent the list out --

19 A Mm-hmm.

20 Q -- and receive all --

21 A Yes.

22 Q -- list-rental income?

1           A     Yes, mm-hmm. That goes back to your  
2 question before about whether it is independent  
3 income or income derived from the client. It  
4 really becomes independent income.

5                     (Pause)

6           Some clients at least require that the  
7 names never be rented under the name of the  
8 organization. Sometimes they are willing to get  
9 -- they're able to get that kind of concession in  
10 the co-ownership. If they don't, then it's even  
11 more damaging, because they're out there renting  
12 it for what exactly it is.

13          Q     Is there a usual way that you calculate  
14 the value of a mailing list?

15          A     For the purposes of rental or for the  
16 purposes of sale?

17          Q     Both.

18          A     For rental, the market dictates. There  
19 are ranges for -- for compiled lists, for voter  
20 lists, for charitable lists, for direct-response  
21 political lists. There are ranges.

22                 In the old days, a political list went



1 for about 6 cents a name. Nowadays, political  
2 lists can go for as much as -- as 15 cents a name,  
3 \$150 advance for a good political direct response  
4 list.

5 For voter lists, it's about a penny and  
6 a half a name. For compiled lists, somewhere in  
7 the 55 to 80 -- or 5-1/2 to 8 cents a name.

8 And, you know, charitables are usually  
9 about 7.5 to 9 cents a name.

10 Q And that is for renting those?

11 A Right.

12 Q That was rental?

13 A Those are rental, yeah.

14 (Pause)

15 Q And for sales, what would be the way --

16 A Okay. For the sale of the list, that  
17 sometimes can be subjective.

18 The list brokers we work will usually  
19 take a look at what they believe the ability to  
20 rent will be over a year to a year and a half.  
21 And they won't pay more than what they can recoup  
22 in six months to a year.

1 Q What is a company entitled to do with a  
2 client's list if it doesn't co-own the list?

3 A They may be entitled to have right of  
4 first refusal to serve as the list manager or list  
5 broker. If they don't co-own past that, they  
6 don't have any rights, period.

7 (Pause)

8 Q Okay. Is it usual in the industry for  
9 contracts to provide for companies to receive  
10 commissions on list rentals of a client's mailing  
11 list?

12 A For a direct marketing agency, no. For  
13 a list brokerage, yes.

14 And list-brokerage houses should be  
15 separate from an agency, independent as a company,  
16 for the industry to recognize them as a legitimate  
17 broker.

18 (Pause)

19 Q If you co-owned a mailing list with a  
20 client --

21 A Mm-hmm.

22 Q -- would you figure in the value of

1 co-owning a mailing list when you established your  
2 profit margin?

3 A When I set my fees, that could be a  
4 point the client could use to negotiate fees down.

5 Would I automatically do it? No. I  
6 usually see it as two separate -- I would see it  
7 as two separate things.

8 Q Okay.

9 A Really, the only time that we've ever  
10 ended up in a co-ownership situation is where the  
11 client actually came to us at a point and said,  
12 "We want to give you a bonus because you've been  
13 doing a good job, and we also want to give you  
14 more incentive to generate more names even more  
15 quickly, so we want to give you co-ownership."

16 We thought it was really sort of nice  
17 that they suggested that.

18 Q Would you say that it's usual in the  
19 industry for direct mail companies to -- or direct  
20 mail companies that co-own the list to figure in  
21 the income that they might receive as a result of  
22 the co-ownership of the list when they set their

9604371869

1 fees?

2 A I don't remember Richard Viguerie ever  
3 altering his per-piece fee based on the very few  
4 times when he didn't co-own.

5 All right. I do not ever remember. And  
6 the co-ownership would be in the case where a  
7 client with a lot of clout would come to him and  
8 say, basically, "You know, you can mail for me. I  
9 won't take co-ownership. I already have this huge  
10 database anyway, so I don't really need you," but  
11 for whatever reason decided to enter into the  
12 partnership.

13 And I do not ever remember a contract  
14 where we had a higher -- say, for example, a  
15 higher prospecting rate because we didn't co-own.

16 And still -- contracts were still the  
17 normal ranges of what we would offer anyway. So I  
18 don't remember ever being -- and that would be the  
19 only way I could independently really verify that.

20 (Pause)

21 Q Is it a usual practice in the industry  
22 to extend credit to political committees?

1           A     It is less usual these days. It is --  
2     it is not totally unusual.

3           I know that's a little bit more vague.

4           (Pause)

5           Q     You said that your company, though, does  
6     extend credit to political committees?

7           A     On some occasions. For example, we do  
8     work for the National Republican Senatorial  
9     Committee. We trust them to pay their bills, so  
10    therefore they have a long track record. The  
11    vendors allow them the back end, as opposed to up  
12    front.

13           If it's a brand new committee, again,  
14    more and more people are requiring that they  
15    either have money in escrow or they keep a very  
16    tight rein on, you know, how the money is spent.

17           Q     Okay. So, again, you're saying that  
18    it's not usual in the industry to extend credit?

19           A     To -- well, that is a -- that is a tough  
20    call. Not usually.

21           Q     So some do, some don't --

22           A     Yes, some do --

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1 Q -- would that be the answer?

2 A Some do, some don't. Less do these  
3 days. Less and less do.

4 Q And by "these days," you mean since --

5 A Since about '84.

6 Q Okay.

7 (Pause)

8 Just thinking of instances when your  
9 company has extended credit to a client, what does  
10 your company do when a mailing -- when mailings  
11 from a client begin to result in a loss of income  
12 to the company?

13 A Okay. We usually stop prospecting and  
14 start doing debt reduction in house files.

15 Q Okay. And is that what's usually done  
16 in the industry when mailings start to result in a  
17 loss?

18 A By the legitimate, credible agencies,  
19 yes -- by the better agencies.

20 (Pause)

21 Q Okay. And at what point, again, would  
22 you discontinue the mailings for?

1           A     Usually -- if we had gone out with two  
2     or three waves, with, you know, three or four  
3     different approaches, and we hadn't found any copy  
4     points or any lists that worked, usually after the  
5     first mailing alone, we have a pretty good idea.

6           Q     Yes.

7           A     And again, that would take -- could take  
8     as long as a year. Usually, you know --

9           Q     What do you mean by "copy point"?

10          A     In other words, the positioning of a  
11     concept and which things in the copy are likely to  
12     move people.

13                If we can't find the way to state a  
14     position or to market an issue that gets across to  
15     people -- I could use the current budget debate  
16     and the way that Democrats market and Republicans  
17     market to make that point.

18                Democrats have found the copy points  
19     that work. The Republicans are clueless.  
20     That's --

21                       (Pause)

22          Q     Okay. And if your debt reduction

1 mailings aren't working, at what point do you  
2 discontinue that?

3 A Boy, if the debt reduction -- if the  
4 first two or three, tops. So within two to three  
5 months after the first one, I would get really  
6 nervous.

7 Q And would you -- you said?

8 A It's really push hard for a debt  
9 reduction not to work. That's -- it's really  
10 tough for it not to work -- debt-reduction  
11 mailings. Donors are usually pretty good at  
12 helping a client pay their bills.

13 So, if any debt-reduction mailing isn't  
14 working, that agency ought to reexamine whether or  
15 not they should be in business.

16 Q Okay. And you said your contracts are  
17 open-ended.

18 A Mm-hmm.

19 Q But if your contract did provide for  
20 some specified period, and the mailings were  
21 resulting in losses, and the debt reductions  
22 weren't working --

1 A Mm-hmm.

2 Q -- would you discontinue the mailings  
3 despite the duration of the contract?

4 A Yeah. And I think I'd probably give  
5 them the name of some agencies that they ought to  
6 try to see if they can do a better job.

7 The other thing, too, would be to try to  
8 other use some telemarketing, too, to find out why  
9 they're not working, because the one and only  
10 advantage -- because I hate telemarketing.

11 The one and only advantage that  
12 telemarketing has is that you get interaction with  
13 the donors and you might get some constructive  
14 feedback as to why they're not responding.

15 So, it might be worth a direct-marketing  
16 test or two -- telemarketing -- sorry, not direct  
17 marketing -- test.

18 (Pause)

19 Q Okay. Now, what would your company do  
20 in the instance when the -- okay. Well, I'm  
21 sorry.

22 In an effort to reduce the debt of a

1 client --

2 A Mm-hmm.

3 Q -- has your company ever reduced your  
4 charges, amended the contract to reduce the  
5 charges?

6 A No.

7 Q Do you have an opinion on why a company  
8 might do that in an effort to reduce debt?

9 A Guilty conscience. If the agency is  
10 doing their job, the agency deserves to be paid  
11 their fees, so I can't see that there would be a  
12 legitimate business reason.

13 There might be an ideological reason.  
14 But then I would think they would have to make  
15 that as a personal contribution, as opposed to a  
16 corporate gift.

17 Let's see. Let me think about -- let me  
18 make sure --

19 Q Okay.

20 A -- go back in my memory banks here  
21 and --

22 (Pause)



1           No. And, in fact, what we may do is we  
2 may say to them, "Why don't you try actually  
3 producing the house files in-house by your own  
4 staff for the next couple of mailings to keep  
5 costs way down? And you guys write the first  
6 draft of the copy. We'll simply edit, and that  
7 way you don't have to pay us the minimum fee."

8           We've done that. But that's a different  
9 thing, because the cost is reduced to us, too, so  
10 we can reduce our fees.

11          Q     So then, in your opinion, it's unusual  
12 in the direct mail industry to reduce your charges  
13 in an effort to reduce --

14          A     By a legitimate --

15          Q     -- client --

16          A     -- by legitimate business people for a  
17 political organization, yes. And I would think it  
18 would be a violation of law, too.

19                Now, it's something -- if the contract  
20 is canceled and there's a totally new contract  
21 renegotiated, that's a different question.

22          Q     If your company co-owned a client's

1 mailing lists, would you apply income received as  
2 a result of co-owning the list to the client's  
3 outstanding debt?

4 A No. But I do know that Viguerie, from  
5 time to time, at the end of a given year would  
6 sometimes give credits back because of income they  
7 had made from the list. I do remember there were  
8 occasions.

9 Q And would that be done just if that  
10 was --

11 A That was across all clients. It  
12 wouldn't be done for a particular client, though.

13 Q And even if there was no provision in  
14 the contract that stated that income from the  
15 co-ownership of lists --

16 A Mm-hmm.

17 Q -- would be used to reduce your debt,  
18 even that wasn't stated in the contract, that  
19 would be done?

20 A That wouldn't be usual.

21 Q Okay.

22 (Pause)

9604371878

1           If your contract authorized you to apply  
2 list-rental income to a client's outstanding debt,  
3 would you do that to reduce the client's debt?

4           A     If the -- if the contract called for it,  
5 yeah.

6           And again, if, in that kind of  
7 situation, I -- I would -- and the only contracts  
8 I've seen that would do something like that would  
9 be where, during the duration of the contract, the  
10 agency didn't have the right to rent the names for  
11 itself, the agency only had the right to rent the  
12 names for the client. The agency's right only  
13 kicked in after termination of the contract.

14          Q     So, in the --

15          A     And I have seen a lot of contracts like  
16 that.

17          Q     So in the co-ownership situation --

18          A     Mm-hmm.

19          Q     -- that wouldn't even be usual?

20          A     Unless it was -- unless it was spelled  
21 out, in the terms, that the agency didn't have the  
22 right to rent the names during the duration of the

1 contract, but its right to co-ownership only  
2 started after the contract ended.

3 Then the income, if -- if it stated  
4 that, that their rights were only after the  
5 contract ended, then legitimately, during the term  
6 of the contract, that income really would be the  
7 client's. It wouldn't be the agency's.

8 But then the client would be approving  
9 who got to rent it. That's another thing to look  
10 at, is the client getting the right of copy  
11 approval and -- and veto power over who gets to  
12 rent the list, because that is the normal  
13 procedure in a list-rental arrangement.

14 When somebody is getting the income,  
15 they also have the right usually to have veto  
16 power over who uses it and doesn't use it. So,  
17 that client is getting a signoff as to gets to use  
18 the list or not. That would be normal and usual  
19 in a list situation.

20 (Pause)

21 Q It would seem to me that if a contract  
22 provided for co-ownership of the client's mailing

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1 list --

2 A Mm-hmm.

3 Q -- where the agency could do whatever it  
4 wanted to with the list, then it would not be  
5 necessary to also provide that the agency would  
6 get some fee for list rentals; is that accurate?

7 A Well, try me one more time.

8 Q If the agency co-owns the mailing  
9 list --

10 A Mm-hmm.

11 Q -- and can rent the list --

12 A Mm-hmm.

13 Q -- or do whatever it wants --

14 A Mm-hmm.

15 Q -- with the list --

16 A Mm-hmm.

17 Q -- why would it be necessary for the  
18 agency to also specify in the contract that it can  
19 receive list-rental fees?

20 A It shouldn't. They may do it as an  
21 extra protection to clarify for the client. But  
22 if they co-own and it said in the contract they



1 can do anything they want, then they co-own and  
2 they can do anything they want.

3 But that may be something the client  
4 asked for, for clarification, or they may have put  
5 in there because they've had enough clients  
6 complain that didn't understand that provision.

7 (Pause)

8 Q Do you have any idea why a direct mail  
9 company that is authorized to apply list-rental  
10 income to a client's outstanding debt would not do  
11 that?

12 A Okay. If they're authorized to, but  
13 don't have to?

14 Q Exactly.

15 A Because they'd make more money.

16 Q Okay. And how so? Could you elaborate  
17 on that.

18 A Well, if they are authorized to apply  
19 list rental to an outstanding debt but aren't  
20 required to and they can bill on the agency fees  
21 and, then they also make money off the list  
22 rental, you know that's -- two and two equals four

1        instead of two and one equals 3, you know. They  
2        get the full benefit of the fees on both sides.  
3        It's more money for them.

4            Q        Is that usual in the industry?

5            A        Again, if -- if they're authorized to  
6        use the money to reduce the debt, usually the  
7        terms would be spelled out that that's what is  
8        supposed to happen, that they will then use --  
9        they're assuring the client that if there is a  
10       debt, money from list rentals will be used to  
11       reduce the debt.

12           Q        Okay. So then, I guess the question I  
13       need to ask is: Would it be an unusual contract  
14       provision in the direct mail industry --

15           A        It can go either way.

16           Q        -- to just say that the agency is  
17       authorized to use the list-rental income to reduce  
18       the debt and not that it shall use list-rental  
19       income to reduce the debt?

20           A        That's sort of odd -- yes, really sort  
21       of odd. They can or they don't have to, within  
22       the discretion of -- that's really sort of odd.

1 Q That would be -- "odd" would be the same  
2 as "unusual"?

3 A Unusual. I've never seen -- and I've  
4 seen a lot of contracts. Very odd. I don't think  
5 a company has filed suit against a client to  
6 collect the debt for a client.

7 Q How many times has it done that?

8 A Versus how many times we've threatened?

9 We probably only actually had to get  
10 into court two times. Usually the threat of a  
11 suit itself is enough or we hire a collection  
12 agency.

13 Q You mentioned that your company has  
14 filed suit against a client to recover debt?

15 A Yeah, one -- maybe two times --

16 Q Okay.

17 A -- in 14 years. Usually the threat of a  
18 suit or hiring a collection agency to threaten  
19 suit is enough to do it.

20 Q Okay. Do you recall, during each of  
21 those times, one or the two times, what the amount  
22 of the debt was?

1           A     Only -- in one case, it was only about  
2     25,000, I think -- 25 -- yeah, I think it was  
3     about 25,000. It has been a while. We do have  
4     another client that we may, in fact, be filing  
5     suit against for about 200,000.

6                     But that's actually not tuned just to  
7     our company. It's -- there are two or three  
8     companies.

9           Q     Okay. With respect to the client that  
10    owed about \$25,000, do you recall how long the  
11    debt had been owed before you filed suit?

12          A     I think we did it fairly quickly. I  
13    think the debt had only been owed not even a year.

14          Q     Would it be usual in the industry to go  
15    ahead and file suit against a client when a debt  
16    is owed for a year?

17          A     No, it is not, because indirect mail a  
18    lot of times -- you know, we are -- well, let me  
19    explain it better this way.

20                     In most business, debts are owed and  
21    bills are paid 30, 60, the 90 days -- 90 is  
22    excruciatingly long for most business debts.

1 Indirect mail -- 45, 60, 90, 120 is fairly normal.

2 So, usually when it goes over 120,  
3 people start getting really nervous. But if  
4 there's an ongoing mail program and they're paying  
5 something down on the debt to you and your vendors  
6 are being kept current, you probably would  
7 continue.

8 And so, therefore, the debt might get  
9 older. But as long as there's some movement on  
10 it, that would be okay.

11 If the program was stopped for whatever  
12 reason, that might be something that provokes you  
13 to -- to sue.

14 Q Okay. When you say "as long as there's  
15 some movement on it," what exactly --

16 A That there is nothing coming in off of  
17 the house file mailings, that you can give the  
18 client some money for programs so you have  
19 legitimate things to write about, your vendors are  
20 being kept current, and there is some movement on  
21 the old debt, as well as your current costs  
22 getting paid, then there's a reason to continue

1 while you work the debt down.

2 Q And "some movement on the old debt," how  
3 would you define that?

4 A I mean, it could be as low as \$1,000 or  
5 \$2,000 a month towards an old debt.

6 You know, I've actually had cases, I  
7 think, where as long as current costs are being  
8 paid, if they paid us \$500 a month, that would be  
9 fine. If it's a very large debt, we'd want more,  
10 2,500 or 5,000.

11 Q All right. My next question -- this  
12 relates back to when you were talking about  
13 agencies having or putting a client in a  
14 prison-sentence type of situation.

15 Why would a company want to keep a  
16 client in its control when the client is not  
17 paying its debts?

18 A One word: Billings.

19 Q Well, can you elaborate on that?

20 A If they have billings and it's a large  
21 corporation that has a line of credit with a bank,  
22 one of the things the they have to report to the



1 bank how much they're billing.

2 And it affects their balance sheet,  
3 because most balance sheets -- you have a cash  
4 balance sheet and if you have an accrued balance  
5 sheet --

6 If you can show -- even if on a cash  
7 basis, you're not doing that great, but on an  
8 accrual basis -- and you've had a semi-decent  
9 record that there's a profit, because  
10 billings-wise, it still looks healthy -- that  
11 makes the financial institutions that a company is  
12 dealing with feel good about this company as a  
13 creditor.

14 And you can get lines of credit extended  
15 based on the billings that are outstanding.

16 So, billings would be a reason to do it,  
17 to keep your bank happy. And also some agencies  
18 believe, ultimately, that they will collect either  
19 all or a large percentage of what's outstanding.  
20 And it also keeps the client indentured, because  
21 if the client walks out, they have a stronger case  
22 why that has to be paid right then.

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1 I cannot tell you how many clients who  
2 want to switch agencies will say specifically that  
3 they can't do it because of how much money they  
4 owe.

5 Q I'm sorry. I didn't hear that point.

6 A I cannot tell you how many times a  
7 client who wants to switch agencies will say that  
8 they can't do it because of the incredible debt  
9 that they owe --

10 Q Okay.

11 A -- to that agency.

12 Q Would a tax write-off also be a factor  
13 that an agency might consider in --

14 A Because they write off the billings?  
15 Could possibly be -- could possibly be.

16 Q Okay. I'd like --

17 A Not being a tax expert, I can't tell you  
18 for sure, but that would seem to enter into it.

19 Q Okay. I'd like for you now to consider  
20 a specific situation --

21 A Okay.

22 Q -- and I'll be asking several questions

1 based on this scenario.

2 A client has a five-year contract with a  
3 direct mail company for carrying out a direct  
4 response fund-raising program.

5 At the end of the second year of the  
6 program, the client's debt was only 13 percent of  
7 the client's income.

8 At the end of the third year, the  
9 client's debt was 300 percent of its income.

10 And at the end the fourth year, the  
11 client's debt was 533 percent of its income.

12 A Mm-hmm.

13 Q What would be your initial response to  
14 that scenario?

15 A That the client was not monitoring the  
16 program very well, or the agency was not providing  
17 proper information to the client, and that both  
18 the agency and the client were out of their minds  
19 to get that far out.

20 (Pause)

21 But if it was the five-year with no way  
22 out, obviously the client couldn't do anything

1 about it except stop approving copy.

2 I assume the client did have the right  
3 to approve copy, right?

4 Q And by "copy," again, what --

5 A Ultimately, that is the only hammer many  
6 clients have in an agency situation like that is  
7 that they just stop approving things. But I have  
8 actually seen agencies mail without client  
9 approval anyway.

10 With one agency I have clearly in mind,  
11 the client used to catch them all the time doing  
12 things -- all the time -- without authorization.

13 Q Based on this scenario, again, at what  
14 point would you have discontinued the mailings on  
15 behalf of the client?

16 (Pause)

17 At what point would you have?

18 A Repeat the figures again.

19 Q Okay. At the end of the second year,  
20 the client's debt is only 13 percent of its  
21 income.

22 A Mm-hmm.

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1 Q At the end of the third year, the  
2 client's debt was 300 percent of its income.

3 A I'd say I would have slowed down about  
4 then, in between there.

5 Q Okay. So --

6 A If they're at 300 percent of their total  
7 gross income, the debt was 300 percent of their  
8 total gross income, the program would have stopped  
9 before that.

10 That's crazy -- 300 percent of their  
11 total gross income.

12 Q So somewhere in the third year, the  
13 program would have stopped?

14 A Long before the 300 percent.

15 Q Okay. Probably, then, one or two months  
16 into the third year, you think, or --

17 A I mean, I've had client -- you know, let  
18 us not get it wrong, I've had clients that have  
19 run up debts, usually by design, where they knew  
20 that they were going to have to invest X, Y, and  
21 Z.

22 Here's the plan of how they would

1 recover the money for the debt. They go into it  
2 with their eyes open.

3 But for a client to get themselves in a  
4 situation where debt is actually 300 percent of  
5 the gross income, that would mean a whole lot of  
6 mail that's out there that brought in little or  
7 nothing, unless there was one huge mailing that --  
8 and just one big mailing, based on solid test  
9 results, that, for whatever reason, bombed.

10 And we had a client recently that,  
11 because of an actual political event, that even  
12 though all the stuff had been tested out in a  
13 large roll out, the income fell off by 65 percent  
14 of what the test results were.

15 But in the comment mail, and in the  
16 telemarketing later, we found out there was -- we  
17 thought that this particular political event had  
18 affected it, and we were right. So, unless there  
19 was some unusual -- one huge, massive mailing that  
20 caused it to run up that way, that program would  
21 have ended before that.

22 You know, if you mail ten million pieces



1 and it brings back 2 cents a name or something,  
2 and that's what caused it, that's one thing. But  
3 if it's over a period of time and it's not just  
4 one big mailing, that's really irresponsible.

5 Q Okay. Assuming that it was one big  
6 mailing just for the purposes of the question, how  
7 long then would you continue if, at the end of the  
8 third year, it's 300 percent? Would you go into  
9 the fourth year, to the point we're at here?

10 A I might go -- I'd go in the fourth year,  
11 house files only, wouldn't -- probably wouldn't do  
12 any prospecting.

13 But if it was one huge mailing and it  
14 really ran it up that high, they're in deep  
15 kimchee -- deep k-i-m-c-h-e-e -- it's Korean,  
16 rotten vegetables.

17 It's a delicacy -- wonderful stuff.

18 Q So, how long, though, would you continue  
19 mailing on the house file even?

20 A Their -- if the debt reduction is  
21 working, you continue to mail as debt reduction  
22 until you've knocked off a good part of that debt,

1 if not all of it.

2 Q Could you imagine that you would  
3 continue through the fourth year to the point  
4 where the debt was taken, then, up to 533 percent?

5 A No. That means the debt reduction is  
6 not working.

7 Q Okay.

8 A Yeah, if your mailings aren't working,  
9 you probably need to dig the hole deeper. I'd be  
10 doing telemarketing and other things, again, to  
11 find out what the problem was.

12 There can be extraordinary events. You  
13 know, I had clients who did mailings -- I had a  
14 client back in the -- clients that did mailings on  
15 Communism right when the Wall came down. And the  
16 fact of the Wall coming down threw off the  
17 mailing.

18 I had a political client that had tested  
19 results and did a big mailing. And there was  
20 somebody that came into the race right then that  
21 knocked that client's credibility totally out and  
22 damaged not only that client, but everybody else

1 that was in the race, because it was a big figure  
2 that, you know, once they came, everybody knew  
3 that that was going to be the person who won.

4 So, everybody's results fell off. So,  
5 there can be extraordinary events that cause that  
6 to happen. But if it's a solid program based on  
7 solid tests and continuations, it shouldn't  
8 happen.

9 (Pause)

10 Q So, would you be able to pinpoint sort  
11 of generally when, during that fourth year, you  
12 might have stopped mailing?

13 A After two or three debt-reduction  
14 mailings, if they aren't working, then you've got  
15 a real problem.

16 Q Okay. Would you please keep the  
17 scenario that I gave you in mind --

18 A Mm-hmm.

19 Q -- and please share with me how you  
20 would respond to the following argument: That as  
21 a result of the company's co-ownership of the  
22 mailing list --

1 A Mm-hmm.

2 Q -- created pursuant to the contract with  
3 the client, the company has continued to earn  
4 significant net dollars and expects to do so over  
5 the next four years.

6 A Mm-hmm.

7 Q List-rental income earned from the  
8 mailing list of 128,000 names and new accounts  
9 produced as a result of publicity over the  
10 project --

11 A Mm-hmm.

12 Q -- has more than offset the more than \$1  
13 million owed to the company.

14 (Pause)

15 A It's amazing to me the publicity about  
16 such a situation would bring them accounts. But  
17 that's beside the point.

18 Income off a list over four years would  
19 not be significant. Lists after two years become  
20 pretty worthless. So, their ability to rent and  
21 use it effectively for rental would diminish  
22 greatly after two years -- I mean precipitously

1 after two years.

2 So, the argument of four years makes no  
3 sense. Otherwise, that's the problem, their  
4 clients are using lists that old. That may be  
5 what gets them into trouble.

6 128,000 names to ameliorate a million  
7 dollar debt? Got a calculator?

8 (Discussion off the record)

9 THE WITNESS: Yeah, if you have a  
10 calculator --

11 (Pause)

12 And this is probably more generous than  
13 is legitimate. If we were to say the list was  
14 good for four years, the most they're going to  
15 have is probably 10 rentals, 10 full rentals,  
16 because they're going to have clients testing and  
17 continuing. The most I would imagine they have is  
18 10 full rentals list a year.

19 So, at four years -- which, as I said,  
20 there's no way -- there would be about \$512,000  
21 income, gross income. The net income therefore  
22 would be --

1 (Pause)

2 The net income -- because their  
3 brokerage house would probably be entitled to 20  
4 to 40 percent of the income, the net income would  
5 probably be about 307,000.

6 That's being real generous; probably  
7 ought to cut those figures all in half, unless  
8 they can document for you that they can show you a  
9 pattern where that list has been used more than 10  
10 times in a given year -- full usage of the list,  
11 not just a usage, because a usage could be 5,000  
12 names, it could be 10,000 names, it could be half  
13 the list, but fall through.

14 You know, if -- 10 times a year would be  
15 very aggressive for a variety of clients.

16 Q So, the gross amount would go down to  
17 the net amount for any other reasons other than  
18 the amount that they --

19 A Well, because the brokerage -- the  
20 broker would be entitled to commission.

21 Q Okay.

22 A The list manager is usually entitled to



1 about 20 percent, and the broker is usually  
2 entitled to about 20 percent. So, if they broker  
3 and manage, it would be about 40 percent.

4 Sometimes deals are cut though in those  
5 kinds of situations where the broker doesn't take  
6 the full 20 and the manager doesn't take the full  
7 20. So, yeah, it could be 30 percent. So, they  
8 get 70 percent.

9 But the most I think they're probably  
10 looking at is 512,000 gross, factored after  
11 whatever the broker's commission is -- and that's  
12 the broker's cost of doing business -- you come up  
13 within that figure. But there should be a track  
14 record on the use of that list.

15 I mean, that's easy to look and see. If  
16 they've co-owned it and had the ability to use it  
17 during that time period, then you'll have a track  
18 record as to how much is being used.

19 Q That was actually my next question,  
20 whether or not the income from co-ownership of the  
21 list is easily verified --

22 A Oh, yeah.

1 Q -- verifiable?

2 A Yeah.

3 Q Okay.

4 A Through their list broker, there should  
5 be records of usage and there would be invoices  
6 created and income booked. So --

7 Q So, it's not -- the income that they  
8 might get as a result of co-ownership is not  
9 something that they can easily misrepresent?

10 A No, they shouldn't be able to. Again,  
11 too, if they had the right to be running it during  
12 the term of the contract, the time those names are  
13 going to be "the hottest" and, you know, "the more  
14 likely to be rented more often and be more  
15 productive" would be right when they're brand new.  
16 Usually the first six months to a year is when the  
17 names are the best.

18 So, if the contract has been effect for  
19 five years, as you said, there should be some  
20 demonstration in that five-year term as to how  
21 productive those names were as rental. And that  
22 should be extremely easy to verify.

1           You should ask for a data card, too, and  
2   see if they've created data cards on the file.  
3   Again, if they're allowed to rent it and their  
4   brokers are allowed to represent it, they would  
5   probably have a data card.

6           Q     >Data card" meaning the data of the  
7   donors?

8           A     It will be a card that's distributed by  
9   the broker representing what that list is and how  
10  much it's on the market for and what the charges  
11  are for the use.

12           A lot of these agencies that have  
13  co-ownership very often won't rent the lists  
14  outside of their agency. And they use it as a  
15  selling point as to why you should come to them,  
16  because they've got this data bank of names that  
17  nobody else has access to.

18           All right. So, that is the situation  
19  sometimes. But most of the agencies nowadays do  
20  rent on the outside as well. They won't give all  
21  the selectivity though.

22           Remember the thing I said earlier about

1       how if they co-owned they have all this  
2       information on the names that they can use for  
3       their other clients?

4               Usually, though, when they put it out to  
5       other agencies for their use, they won't allow a  
6       lot of that information out. They'll use it for  
7       their own clients.

8               Q       Okay. What is meant by the term "first  
9       generation list-rental income"?

10              A       "First generation list-rental income."  
11       I would imagine -- I've never really heard it  
12       used, but I would imagine what they're trying to  
13       say those names don't appear on a lot of other  
14       people's lists or that the list is -- is brand new  
15       and is just -- just now going on the market.

16              Q       Okay. So, that term is --

17              A       It's not a common term.

18              Q       It's not common. Okay.

19              A       I mean, I'll go back and ask my list  
20       brokers, but I've not heard that.

21                      (Pause)

22              Q       I may have covered part of this before,

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1 but I'm just going to go over it one more time.

2 The next few questions have to do with  
3 companies that co-own the mailing list with their  
4 clients.

5 It is a usual and normal practice in the  
6 industry for companies -- for such companies to  
7 offset a client's debt with the actual rental  
8 income from the mailing list?

9 I really do not recall any of those  
10 companies ever doing that, nor have I -- do I  
11 recall any clients that have come to us from said  
12 companies saying that that was the case.

13 We've got a couple in-house right now  
14 that I can double-check with. But I don't  
15 remember that ever being done.

16 (Pause)

17 Again, Richard Viguerie at times, back  
18 in the '70s, did issue some credits sort of as "a  
19 Christmas present to the clients." I don't  
20 remember him doing it for the political, though.  
21 It was more the charitable clients.

22 Okay. It might have been for political,

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1 too. But I don't remember ever -- for, like, a  
2 candidate -- ever giving him credit.

3 Q Okay. Is it a usual practice for  
4 companies that co-own their own lists to offset a  
5 client's debt based on an increase of the value  
6 and size of all other company client lists that  
7 obtain new donors from their mailings to the list?

8 A Excuse me?

9 Q I'll repeat that.

10 A I'm still trying to go over the other  
11 thing -- you know, "authorized but doesn't have  
12 to."

13 Q Companies that co-own the list with  
14 their client --

15 A Yes.

16 Q -- would it be usual in the industry for  
17 those companies to offset a client's debt --

18 A Mm-hmm.

19 Q -- based on an increase in the value and  
20 size of all other company clients' lists that have  
21 mailed to that client's lists?

22 A No.



1 Q Okay. And I may know the answer, but  
2 let me just ask this question anyway.

3 Is it usual for companies that co-own  
4 mailing lists with their clients to offset a  
5 client's debt based on an overall,  
6 across-the-board increase in the business volume  
7 due to an increase in the size of all of the  
8 clients' mailings who have mailed to the list?

9 A No.

10 Q Do you see a distinction in the question  
11 I just asked and the one that I asked --

12 A Yes.

13 Q You do. What -- what do --

14 A Well, what they're trying to say is  
15 because everyone is doing better, we want to share  
16 this benefit with the client. But they really are  
17 different, because one is everybody -- the client  
18 is doing better.

19 In the other case, everybody -- the  
20 agency is doing better.

21 No. They are bizarre flipsides of the  
22 same coin, though -- really bizarre.

1           It sounds like somebody really making  
2           excuses for why they want to issue a credit.

3           Q     Are you familiar with Response Dynamics,  
4           Incorporated?

5           A     Mm-hmm. Yes, I am.

6           Q     How are you familiar with Response  
7           Dynamics?

8           A     I actually knew of and knew the  
9           principals before they were Response Dynamics,  
10          when they were working for Bruce Eberly and  
11          Associates. And their original partner, Marilyn  
12          Price -- who was one of the three original  
13          founders of Response Dynamics -- I had known for  
14          some time.

15          But I knew them originally as employees  
16          of Bruce Eberly and was familiar with them because  
17          we have inherited clients from them, and we have  
18          also worked on clients at the same time that they  
19          have.

20          Q     Okay.

21          A     -- where it has been exclusive.

22          Q     Let met go back for just one minute.

1 You spoke earlier about being aware of a company  
2 that had mailed to a list without copy approval  
3 from the client.

4 A Mm-hmm.

5 Q What company were you thinking of when  
6 you said that?

7 A Response Dynamics. I have a client who  
8 showed me a stack of documents of a variety of  
9 actions Response Dynamics had taken without their  
10 authorization.

11 Q And what client was that?

12 A It was Council for Inter-American  
13 Security. It was a nonpolitical client, but it  
14 was an issue that faced the client. In fact, the  
15 Council went on to sue RDI.

16 Q Went on to sue?

17 A To sue them.

18 Q Okay. You said that they, Response  
19 Dynamics, had taken a variety of actions without  
20 the client's approval?

21 A Yes. They had --

22 Q What?

1           A       -- mailed without copy approval, they  
2       had mailed after the client had disapproved a  
3       particular mailing.

4                   And so, in other words, the client may  
5       have had original copy approval, and then at a  
6       point they said. "Stop mailing that prospect  
7       letter."

8                   RDI continued to do it. And again, this  
9       is -- this was shared by the client, showing their  
10      variety of different pieces of paper and saying,  
11      "Can you believe that they're doing this?"

12                  Also, in their arrangement, there were  
13      client escrow authorizations that were not  
14      signed -- at least, the client said they hadn't  
15      signed them -- where they were for money to be  
16      taken out of accounts.

17                Q       Were they blank, or had someone signed  
18      for the client?

19                A       This particular client said that there  
20      were occasions that they did not recognize the  
21      signature.

22                               (Pause)

1 Q Are you aware of any information  
2 relevant to the profitability of Response Dynamics  
3 relationship with the National Security Political  
4 Action Committee?

5 A No, I am not.

6 Q Okay.

7 A I remember one conversation -- that I  
8 have to think about -- when -- Lilly Fedai and I  
9 had. So, I was aware that it was a large debt,  
10 and I know she was extremely unhappy.

11 Q Okay. What is her name?

12 A Lilly Fedai --

13 Q Oh.

14 A -- F-e-d-a-i.

15 Q Can you just state for me who Lilly  
16 Fedai is?

17 A She, at the time, I believe, was  
18 supposed to be running the National Security  
19 Political Action Committee.

20 I think she felt like she had little  
21 control over it, though. And I don't remember the  
22 specifics of the conversation. I just remember

1 coming away thinking, "My God, you know, they have  
2 taken her to the cleaners."

3 Q Do you remember when that conversation  
4 took place?

5 A When the debt was about a million  
6 dollars -- the total debt was about a million  
7 dollars.

8 Q Okay.

9 (Pause)

10 Okay. You said, "When the debt was a  
11 million dollars."

12 A Mm-hmm.

13 Q Do you know exactly, in terms of time,  
14 when that was?

15 A '89, I believe -- end of '88, '89.

16 (Pause)

17 Q Okay.

18 (Pause)

19 Okay. You mentioned that Lilly Fedai  
20 said that she didn't feel that she was really in  
21 control of National Security --

22 A I took --



1 Q -- at that time?

2 A I took that to mean -- I didn't ask her  
3 for -- for a clarification. I took that to mean  
4 that she was suffering from, like, being an  
5 indentured servant --

6 Q Okay. So that --

7 A -- syndrome.

8 Q -- Response Dynamics was basically in  
9 control of --

10 A Yeah.

11 (Pause)

12 Q Did you have an opinion regarding the  
13 profitability of the -- of Response Dynamics'  
14 relationship with the Republican Challengers  
15 Committee?

16 A Can you tell me who the principals are,  
17 so I can recognize that committee, because I don't  
18 recognize it by that name.

19 Q Floyd Brown.

20 A And this is not Citizens -- or  
21 Conservatives United -- Citizens United? This is  
22 the other one?

1           Then, no, I guess I am not familiar with  
2           it.

3                       (Wesche Deposition Exhibit No. 1  
4                       was marked for identification.)

5           BY MS. LIGON:

6           Q       Ms. Stone, I'm handing you what has been  
7           marked Exhibit No. 1.

8           A       Mm-hmm.

9           Q       Would you tell me what it is, please.

10          A       It appears to be an agreement signed in  
11          April of 1986 between Response Dynamics and blank.

12                   MS. LIGON: Okay. Ms. Stone, would you  
13          please carefully read this agreement.

14                   And using this yellow highlighter, would  
15          you identify each and every provision in that  
16          agreement that's not usually and normally included  
17          in agreements in the direct mail industry.

18                   (Witness examined document)

19                   THE WITNESS: If I might, before I go on  
20          through this, I do want to call your attention to  
21          Section 5(d), where it talks about "The Agency is  
22          hereby irrevocably authorized to have Client list

1 rental income received pursuant --"

2 The way that that is stated there  
3 obviously has provoked your line of questioning.  
4 And there, if it is a true situation of it is the  
5 client's list-rental agreement -- or list-rental  
6 income, then you should ask to see the  
7 authorizations by the client of copy approval for  
8 the use of their list.

9 Because if it's the client's list-rental  
10 income, it means they should have been getting  
11 authorization -- you know, list authorization use  
12 forms with copies of what copy would have been  
13 mailed to the list if, in fact, it's income  
14 they're receiving. And that's a normal  
15 relationship with -- and that's a very usual  
16 relationship with a list broker.

17 If they were not allowing the client to  
18 have veto power over who used the list during that  
19 time period, then I don't see how they're calling  
20 it client-list income. That would be agency-list  
21 income.

22 And find out who had to sign off --

1 MS. LIGON: Okay.

2 THE WITNESS: -- on who used the list.

3 And I cannot think of anybody else ever -- and  
4 I've seen a lot of contracts -- that has ever had  
5 that kind of arrangement.

6 (Witness examined document)

7 THE WITNESS: It's sort of interesting,  
8 17 is "Additional Terms" -- just blank -- filled  
9 in here.

10 (Pause)

11 Did I miss something in this contract  
12 where there don't appear to be any requirements to  
13 get any approvals in writing?

14 BY MS. LIGON:

15 Q This was the contract. This -- I mean,  
16 I just want you to consider this one without any  
17 changes. This was the contract as you see it  
18 here.

19 So, have you finished reviewing it?

20 A (Inaudible response)

21 Q Ms. Stone, would you please now --

22 A Mm-hmm.

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1 Q -- starting from the top of the  
2 contract, first identify what the provision is for  
3 the record --

4 A Mm-hmm.

5 Q -- and then explain how that provision  
6 differs from what's usually and normally done in  
7 the direct mail industry.

8 A Section 1, where it says, "The Agency is  
9 hereby retained and appointed to represent  
10 exclusively" -- first of all, the fact that it's  
11 exclusive is not usual anymore -- "the Client in  
12 carrying out its direct response fund raising  
13 program --"

14 Q Can you just slow down?

15 A I'm sorry.

16 (Pause)

17 Where did you lose me?

18 Q Probably at the beginning.

19 A Okay. "The Agency is hereby retained  
20 and appointed to represent exclusively" -- and the  
21 word "exclusively" because it is not usual anymore  
22 to have exclusive arrangements, so the word

1 "exclusively" in Section 1 is -- it is, one,  
2 unusual.

3 Then, later on in that sentence, going  
4 to the term "and list rentals" -- so, it says  
5 "carrying out its direct response fund raising  
6 program and list rentals --" it is extremely  
7 unusual.

8 I don't think I've ever recalled any  
9 client direct-response agency contract that has it  
10 set out that way, because in the list-brokerage  
11 industry, the broker is supposed to be separate  
12 from the client. The rentals and all that are  
13 separate from -- I'm sorry, are separate from the  
14 agency.

15 Usually, contracts have a provision that  
16 refers to the right of the agency to use the  
17 broker of their choice. But the way it's set out  
18 here, where it's the "fund-raising service (sic)  
19 and the list rentals," is very unusual. I've  
20 never seen it that way. And it does tend to join  
21 the agency and broker a little closer than the  
22 industry generally likes.



1           If you go down to Section 3, re (b) and  
2           3(c), the only thing unusual there is almost all  
3           the agreements I see specify that those  
4           expenditures have to be in connection with  
5           something approved in writing. So --

6           Q     Ms. Stone, before you continue, you  
7           mentioned that you've seen a lot of contracts --

8           A     Mm-hmm.

9           Q     -- in the direct mail industry.  
10          Approximately how many contracts have you seen?

11          A     Probably contracts for 10 or 12 agencies  
12          easily.

13                   (Pause)

14                 During our time period when we were  
15                 agency doctor, we'd see a lot of them. And also  
16                 I've served as an expert witness in several cases  
17                 where I had to see them.

18                 All right. Section 4(b), that's really  
19                 odd, the fact that they're receiving -- the agency  
20                 is receiving "25 percent of the costs for  
21                 solicitation by telephone."

22                 I have never seen any telemarketing

1 agreement, even when it a telemarketing agency  
2 contracting with a client, that sets it out that  
3 way. That's very odd.

4 In our industry, percentages are frowned  
5 on anyway. That's not normal.

6 Q How is it normally done?

7 A It would be a set fee, or it could be a  
8 commission that the list vendor -- or that the  
9 telephone vendor pays the agency. It wouldn't be  
10 25 percent either. If it 5 percent, that's high.

11 But it usually would be a set fee, and  
12 it would be something that the -- that the  
13 telephone vendor pays the agency. It would be  
14 part of their normal cost, so the client couldn't  
15 get it cheaper by going directly to the  
16 telemarketing vendor.

17 The vendor is compensating the agency  
18 for having bought the business to them. All  
19 right. It's sort of a finder's fee commission or  
20 whatever.

21 Q Yes.

22 A And that's a normal thing. Just like

1 the list broker is compensated by the list owner,  
2 not the list user. So, the person who owns the  
3 list, is getting the majority of the net income  
4 off the list rental, is the one that actually pays  
5 the broker their commission. It's not the list  
6 user.

7 And also in Section 4(b), where it goes  
8 on to say, "It is agreed that costs include  
9 charges for the telephone call vendor(s),  
10 telephone lines, and follow-ups by mailgram or  
11 similar devices."

12 For them to receive a percentage for  
13 telephone lines and follow-up costs? Very odd.  
14 I've never seen that. Extremely odd. I haven't  
15 seen that in any of their previous contracts  
16 either. I've seen their contracts before.

17 4(c) -- also unusual. I think I've seen  
18 it once before, where "The Agency shall receive  
19 compensation in sum of two dollars (\$2.00) per  
20 name for individually typed mailings to high  
21 dollar donors (fifty dollar (\$50.00) and up) --

22 First of all, "\$50 and up" is not

1 considered that high dollar. Most people don't  
2 consider it high dollar it's over a hundred. But  
3 that would be one thing that's odd.

4 But having that high a fee per name --  
5 and it's not clear they get that in addition to  
6 the \$50 a thousand -- creative. That's very odd  
7 -- very odd.

8 4(f) -- I have seen this in their  
9 contracts before and only their contracts, where  
10 their -- this is a penalty clause, where they have  
11 to pay liquidated if they to try cancel the  
12 contract prior to the expiration date. This is  
13 part of the indentured servitude thing, buying  
14 their way of freedom.

15 I believe I'm correct in saying they're  
16 the only ones I've ever heard that have done this  
17 -- 25,000 is actually less than I've seen in some  
18 of their contracts. I've seen them charge clients  
19 even more.

20 And you can see if they have had pay  
21 this 25,000, that that's a disincentive for them  
22 to ever try to terminate before the expiration

1 date. But that's unusual. That is an unusual  
2 thing.

3 4(g) -- the fact that the agency would  
4 be entitled to what amounts to a royalty in "the  
5 sum of sixty-five per thousand pieces mailed,"  
6 which the royalty concept is not unusual, where if  
7 they've created a package and after the client  
8 terminates they use the package agency created, it  
9 is unusual to pay the agency a royalty.

10 It is extremely unusual -- I've never  
11 seen it -- where the royalty is greater than the  
12 fee they would have charged while they were a  
13 client -- or the fee that they would have been  
14 charged while they were a client.

15 That's extremely unusual -- and also the  
16 fact that the client would provide the agency the  
17 names and addresses of any party conducting that  
18 mailing, as well as a report on the quantity and  
19 dates of said mailing. I guess in order to  
20 guarantee their compensation, they would need  
21 that, but --

22 5(a) -- you know, "shall render billings

1 from time to time as necessary" -- and -- "shall  
2 be paid no later than the due date stated  
3 therein." I've never seen it stated that vague.  
4 It's just unusual.

5 5(d) -- the concept of using "Client  
6 list rental income" as part of the income  
7 considered in paying off the debt I've never seen  
8 spelled out like this, the concept that income  
9 other than the direct mail income should be paid  
10 -- used to pay off the debt is not unusual in and  
11 of itself. The way it is set out here is.

12 (Pause)

13 Q Okay. Exactly what about it is unusual  
14 -- about the it's set out here is unusual in the  
15 industry?

16 A "The Agency is hereby irrevocably  
17 authorized to have -- income received" -- again,  
18 the fact that it's in here like this, as opposed  
19 to stating that the client is obligated to  
20 whatever sources, as opposed to having it set out  
21 that it's the list income per se that shall be  
22 used and doesn't set out what the client's rights



1 and conditions are in terms of when they get the  
2 income versus when the agency gets the income.

3 Is it only when the invoice goes over 30  
4 days? It's -- it's just not -- it's not clear.  
5 It's weird.

6 Q And then specifically the term  
7 "authorized," rather than a direct --

8 A Right --

9 Q -- "shall."

10 A -- that they have to.

11 Q Yes.

12 A Now, it does tie it into "if such  
13 invoices are over thirty (30) days."

14 But you're right, it doesn't say that  
15 they have to or that it's automatic. It's sort of  
16 at their discretion, which is so bizarre.

17 But I would want to see did that client  
18 have the right to approve or disapprove the use of  
19 their list, because the way it's set out here --  
20 and I would also want to see if there is a  
21 separate contract with any list broker that would  
22 be handling that client's list that would further

1 specify what the client's rights and obligations  
2 are pursuant to this, because it's -- it doesn't  
3 look -- really look to me like it's the client's  
4 -- it looks like it's the agency's.

5 Q Okay.

6 A 7(b) -- again, further indentured  
7 servitude of the "one hundred fifty (150) day,"  
8 having to do it 150 days before the date of  
9 termination.

10 And "Upon receipt of notice of  
11 termination, the Agency shall not commence any new  
12 work, but it shall complete all mailings and place  
13 all lists and advertising (sic) -- advertisements  
14 previously approved."

15 But the client doesn't have any rights  
16 themselves to the use of the list at this time.

17 Basically, it virtually makes it  
18 impossible to terminate the contract because the  
19 client -- unless they have independent income, I  
20 don't see how they survive or where they get  
21 income from, unless they have a whole bunch socked  
22 away during that 150-day period.

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1           Okay. So, how can you terminate  
2 otherwise? 7(c) -- second section of it -- or  
3 second part of it, beginning with "In the event  
4 any such contract is nonassignable and consent to  
5 assignment is refused or the Agency cannot obtain  
6 a release from it obligations, the Agency shall  
7 continue to perform and the Client shall meet it  
8 obligations as though this Agreement has not been  
9 terminated."

10           So, they have ability to set up a  
11 scenario where the client can never terminate.  
12 This is unbelievable. I put an exclamation point  
13 next to it.

14           Q     So, very unusual in the industry?

15           A     Oh, yeah. Again, that's even beyond  
16 indentured servitude. I think that's back to  
17 slavery, full-fledged. 7(e) -- "In the event a  
18 direct mail fund raising project and/or a package  
19 originated by the Agency is delayed in mailing for  
20 fifteen (15) days or more" -- going further, "it  
21 is expressly agreed and understood that the  
22 project and/or package can, at the option of the

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1 Agency, be placed by the Agency with another party  
2 without liability to the Client whatsoever."

3 But then it goes on to say that "the  
4 Client shall be responsible -- for payment of any  
5 contract obligations previously incurred" in  
6 connection with that client (sic) -- to that  
7 package.

8 So, first of all, it's inconsistent.  
9 But second of all, the fact after 15 days they can  
10 give away a client's package -- well, if the  
11 client's package is based on what the client is  
12 doing -- how can they give it to somebody else if  
13 it's what the client is doing, unless what they're  
14 saying is the clients do things that are so  
15 indistinguishable, that they're doing the same  
16 that everybody else is doing.

17 It's -- that's -- the fact that all  
18 property "until final payment" has been made is  
19 unusual, because usually the clients take  
20 possession of property as they pay the invoices.  
21 So, if order artwork "X" is created and artwork  
22 "X" is paid for, that's the client's property.

1           Now, if it is part of a package that was  
2           created and that package is used, the agency will  
3           be owed the royalty. But as soon as the invoice  
4           is paid, whatever they paid for should be the  
5           property of the client.

6           Second section of 8, "The Client also  
7           acknowledges the co-ownership" -- and I'm going to  
8           skip words because they're not necessary -- "of  
9           any and all list(s)" -- in fact, "The Client, its  
10          officers -- representatives shall" never be able  
11          to -- the "never" is my word, but that's what  
12          they're saying -- shall never be able to "rent,  
13          exchange, donate, sell or otherwise provide any  
14          list(s) created -- to any third-party for any  
15          reason whatsoever without prior written approval  
16          of the Agency."

17          Prior to 1975, they could get away with  
18          it. Since about '75 -- at the latest, '78-- this  
19          has not been usual. I mean, this makes it the  
20          agency's property, not the client's. I mean,  
21          that's pretty amazing.

22          And then further, "The Agency shall be

1 entitled to unlimited use of the same both during  
2 the term of this Agreement and at all times  
3 subsequent thereto without any payment of any  
4 nature whatsoever by the" client (sic) -- or "by  
5 the Agency to the Client."

6 That flies in the face of the questions  
7 you asked me. You know, they aren't obligated.  
8 And, in fact, there it says it's without the  
9 "payment of any nature whatsoever."

10 So, how can you issue credits based on  
11 list-rental income when you've stated quite  
12 clearly that it's without the "payment of any  
13 nature whatsoever"?

14 This section also seems to negate that  
15 there can be any kind of client list-rental  
16 income. There is only agency list-rental income.  
17 And this clearly spells out there is no client  
18 list-rental income, it's all the agency's, because  
19 the client has no right.

20 So, I would say when you check, you'll  
21 find out the client never did get to sign off on  
22 who could use and who can't, because this



1 paragraph pretty clearly states that.

2 And then the last -- under 14, the last  
3 sentence, the fact that "the Client agrees to pay  
4 all costs of collection, including an attorney's  
5 fee of twenty percent of the sum due."

6 I've never seen it said that way. Under  
7 American rule of law, you do have to specify when  
8 you want them to be liable for attorneys' fees,  
9 but I've never seen it tied to a percentage figure  
10 of the money due. That's sort of odd.

11 And that's it.

12 Q Well, let me just ask you a few  
13 additional things about the contract.

14 Just looking specifically at the agency  
15 compensation provisions --

16 A Mm-hmm.

17 Q -- under number 4, would all of that in  
18 1986 have been a usual agency compensation in the  
19 direct mail industry?

20 A The \$50 per thousand would be fine. The  
21 other percentages, specifically the percentage  
22 paid on solicitation by phone and the amount per

1 high dollar name, no. And the compensation for  
2 liquidated damages, no. And the royalty exceeding  
3 the original creativity fee, no. Those are not  
4 normal.

5 Q Okay.

6 A First time I've every seen.

7 Q Now, if the company were to, in 1989,  
8 amend this contract to reduce the compensation of  
9 \$50 per 1,000 fund-raising packages --

10 A Mm-hmm.

11 Q -- to \$35 per 1,000 fund-raising  
12 packages, would that be a usual, normal charge in  
13 this scheme of this contract in 1989?

14 A In the middle of the contract, no, that  
15 would not be, not when you have a specific term  
16 set out.

17 Something -- if they decided to  
18 terminate and renegotiate a contract, that's a  
19 whole different can of worms.

20 But I have never seen anybody  
21 voluntarily -- now, I have, on a few occasions,  
22 seen, on a specific project, but it's under

1 contract, so it's nonexclusive, where the client  
2 has more rights, where, in order to get the  
3 client's approval on a large mailing, I have seen,  
4 on a few occasions, where the client has  
5 negotiated a separate fee on a -- even a political  
6 issue kind of client -- separate fee for that  
7 project.

8 And that was in order to gain the  
9 client's approval. And that was amended to the  
10 contract specific for that project.

11 And I have seen something like that as  
12 recently as within the last two years.

13 But in terms of amending a contract  
14 midterm, when you've got a term agreement, having  
15 an agency and a client voluntarily do that, I've  
16 never seen that happen without the contract being  
17 terminated and renegotiated.

18 Q Okay. Ms. Stone, can you focus on  
19 provision 5(c) --

20 A Mm-hmm.

21 Q -- and specifically the -- I guess it's  
22 the second sentence, that begins "The Escrowee

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1 shall tabulate all returns --"

2 A "Deposit all funds in an Escrow Fund,  
3 and shall disburse said returns to the direct mail  
4 suppliers for all bills outstanding prior to the  
5 transfer of funds to the Client."

6 Q I wonder if that provision reflects the  
7 way that your escrowee pays things for your  
8 company and the third-party vendors and the  
9 client?

10 A The escrow -- our escrowee doesn't  
11 actually tabulate the returns. They are in charge  
12 of overseeing the tabulation and the deposit.  
13 They're responsible for the depositing.

14 (Pause)

15 It wouldn't be said that way, per se,  
16 because although they do say later on  
17 "Disbursements from the Escrow Fund shall be upon  
18 the signature of the Escrowee. Authorizations  
19 shall be presented under the joint signatures of  
20 the Agency and the Client to the Escrowee, along  
21 with the invoices," what concerns me there is  
22 generally, A, there is a separate agreement with

1 an escrow agent that spells out the terms very  
2 specifically, and, B, the escrow agent cannot  
3 disburse without having the written authorization.

4 The way this paragraph is written,  
5 conceivably the escrow agent could act without  
6 written authorization, because it doesn't appear  
7 to me to make it binding.

8 It says, "Authorizations shall be  
9 presented -- along with the invoices," but it  
10 doesn't -- it makes it look like they can get away  
11 without doing it, or they can get away with doing  
12 it before. At least that's my reading.

13 So, that is a little odd. I didn't --  
14 it's a little odd, but it's -- it's close to.

15 Q Okay. Again, in provision 5(c), in that  
16 second sentence, would you read the term "direct  
17 mail suppliers" to include Response Dynamics in  
18 that sentence?

19 A Yes.

20 Q Okay.

21 (Pause)

22 A Although -- well, from a legal

1 standpoint, they always designate themselves as  
2 the agency and all other forms of compensation and  
3 procedure, they are spelled out with the agency.

4 So, actually, technically, it should  
5 have been spelled out.

6 I normally think of the agency as one of  
7 the direct mail suppliers. But the way it's laid  
8 out in this contract, that may not be the case.

9 (Wesche Deposition Exhibit No. 2  
10 was marked for identification.)

11 BY MS. LIGON:

12 Q Ms. Stone, I'm now handing you what has  
13 been marked as Exhibit No. 2.

14 Would you tell me what that is, please.

15 A This is "Ethical Business Practice  
16 Guidelines" from the Direct Marketing Institute  
17 (sic) -- Direct Marketing Association.

18 Q Are you aware of any provisions of those  
19 guidelines that Response Dynamics has violated?

20 A Of this particular set of guidelines,  
21 I'd have to go through it line by line.

22 There is another organization called



1 DRFCO (phonetic), whose guidelines we should  
2 provide to you.

3 And in those, I specifically have noted  
4 those guidelines, that they have violated -- in  
5 fact, I will not join that organization because  
6 Response Dynamics has been allowed to be a member,  
7 when people know that they have consistently  
8 violated a variety of the guidelines.

9 And I can look at this very quickly and  
10 tell you, yes, there are several things I see now  
11 that I know that they have probably violated. you  
12 No, I they have knowingly violated.

13 Q And what, again, is "DRFCO"?

14 A DRFCO is Direct Response Fund-Raising  
15 Council, an organization that was set up for the  
16 industry to police itself.

17 But, actually, looking at this now, I do  
18 see things, not in connection necessarily solely  
19 with the political organizations that they've done  
20 work for.

21 But one example would be -- Article 8 is  
22 "Photographs and Art Work." It says:

1 "Photographs, illustrations, artwork, and the  
2 situations they represent should be accurate  
3 portrayals and current reproductions of the  
4 produces, services, or other subjects in all  
5 particulars."

6 David Kunko (phonetic), who is one of  
7 the principals of RDI, had bragged, on several  
8 occasions, how a picture used in some fund-raising  
9 they did for Polish Relief for one of their  
10 charities was a picture of his daughter taken in a  
11 basement, at his house.

12 Q Well, when did that conversation take  
13 place?

14 A When was he saying stuff? I would have  
15 to say probably mid-'80s. It was a while ago.

16 Q Was anybody else present at --

17 A Well, I don't -- I don't remember if --  
18 I can't recall any individuals, but I remember  
19 thinking, "I cannot believe this man is saying  
20 this stuff."

21 Q Okay. Now, with respect to the DRFCO  
22 violations that you were aware that Response

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1 Dynamics committed, what specific violations are  
2 you referring to?

3 A The artwork. Also, also the honesty  
4 behind the clear, honest, and complete nature of  
5 what they're saying about the project, what the  
6 money is going to be used for --

7 Q Okay.

8 A -- and also the treatment of the  
9 clients. There were some provisions on -- on  
10 contracts that I believe they violate in terms of  
11 -- terminating.

12 Q Okay. Ms. Stone, what criteria do you  
13 use to judge whether a contract has been a  
14 success?

15 A A, the client is happy. B, there is not  
16 a huge debt at the end of any particular program,  
17 that the client has received a good deal of net  
18 money for program.

19 Q And what would you consider a huge debt?

20 A You know, if I have a client that has  
21 anything over a \$25,000 or \$50,000 debt, I start  
22 to become real concerned.

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1 Q Okay. Ms. Stone, you're entitled to  
2 read and sign the transcript when it's completed.  
3 You can, at this time, waive your rights to review  
4 and sign the transcript if you so desire.

5 Would you --

6 A I think I would probably like to look at  
7 it, only from the standpoint of just a few figures  
8 in the beginning on a number of clients. And I'll  
9 go back and count --

10 Q Okay.

11 A -- and be able to be accurate on that.

12 MS. LIGON: Ms. Stone, I'm reserving the  
13 right to recall you as a witness if, after  
14 reviewing the record, it is determined that your  
15 testimony is further needed.

16 We are now adjourned.

17 (Whereupon, at 3:51 p.m., the  
18 deposition of ANN E. STONE WESCHE  
19 was adjourned.)

20 \* \* \* \* \*

CERTIFICATE OF NOTARY PUBLIC

I, Connie Bursher, the officer before whom the foregoing deposition was taken, do hereby certify that the witness, whose testimony appears in the foregoing deposition, was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to print under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by, any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

My Commission Expires:  
February 28, 1998



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THE NOTARY PUBLIC FOR  
THE DISTRICT OF COLUMBIA

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ORIGINAL

C O N F I D E N T I A L

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
JAN 5 1 24 PM '96

-----X  
:  
In re: :  
:  
Matter Under Review MUR :  
3638 Federal Election :  
Commission. :  
:  
-----X

Washington, D.C.

Thursday, December 21, 1995

Deposition of

ROGER M. CRAVER

a witness of lawful age, taken on behalf of the  
Federal Election Commission in the above-entitled  
action, before Thomas R. Brezina, notary public in  
and for the District of Columbia, in the offices  
of the Federal Election Commission, 999 E Street,  
N.W., Suite 657, Washington, D.C., commencing at  
10:09 a.m., when were present on behalf of the  
respective parties:

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C O N F I D E N T I A L

2

1 APPEARANCES

2 On behalf of the Federal Election Commission:

3 ANNE WEISSENBERN, ESQUIRE  
4 TRACEY L. LIGON, ESQUIRE  
5 Federal Election Commission  
6 999 E Street, N.W., Suite 657  
7 Washington, D.C. 20463  
8 (202) 219-3690

7 C O N T E N T S

8 EXAMINATION BY:	PAGE
9 Counsel for Federal Election Commission	3

12 FEC EXHIBITS:	PAGE
13 No. 1 - Contract of Craver, Matthews, 14 Smith & Company	22
15 No. 2 - Contract dated April 1986 of 16 Response Dynamics, Inc.	66

17 (Attached to Transcript)

18 \* \* \* \* \*

C O N F I D E N T I A L

3

P R O C E E D I N G S

Whereupon,

ROGER M. CRAVER

was called as a witness and, having been first  
duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR FEC

BY MS. LIGON:

Q Okay.

My name is Tracey Ligon, and I'm here  
today representing the Federal Election Commission  
along with Anne Weissenborn.

This deposition is being taken pursuant  
to a subpoena which was issued in connection with  
the matter designated MUR 3638.

Please treat this proceeding as if you  
were in a court of law and remember that you're  
under oath. Please also remember that pursuant to  
Section 437G of Title II of the United States  
Code, the confidentiality of this matter must be  
maintained until the Commission closes the matter.

I'll be asking you questions regarding  
an investigation that's being conducted pursuant

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1 to the Federal Election Campaign Act of 1971 as  
2 amended. If I ask you a question and you don't  
3 understand the question I've asked, please just  
4 let me know, and I'll rephrase it. If you don't  
5 hear the question, please let me know, and I'll  
6 repeat it.

7 If at any time you realize that you've  
8 made a response that's incomplete or inaccurate,  
9 please just let me know that, and I'll give you an  
10 opportunity to modify your response.

11 Please keep in mind that the court  
12 reporter can only take down words, so please  
13 respond verbally --

14 A Right.

15 Q -- as opposed to nodding or anything of  
16 that nature, and if you need to take a break for  
17 any reason, just let me know, and as soon as I'm  
18 finished with my line of questioning, we'll break.

19 A Okay.

20 Q Okay? Okay.

21 Would you state your full name and  
22 address for the record. Go ahead.

1           A     Roger Moore Craver, C-r-a-v-e-r, 300  
2     North Washington Street, Falls Church, Virginia  
3     22046.

4           Q     What is your Social Security number?

5           A

6           Q     Mr. Craver, are you married?

7           A     I'm separated.

8           Q     Okay. For the record, are you  
9     represented here today by counsel?

10          A     No, I am not.

11          Q     Have you ever been deposed before?

12          A     Yes.

13          Q     Okay. And when were you previously  
14     deposed?

15          A     I'm not certain. 1989, '90.

16          Q     Okay. In what case were you deposed?

17          A     The Federal Elections Commission matter  
18     of the National Organization for Women.

19          Q     So then you're pretty familiar with how  
20     this process will go?

21          A     Yes.

22          Q     Did you discuss the fact that you were

1 subpoenaed for this deposition with anyone?

2 A No.

3 Q Okay.

4 Mr. Craver, what is your occupation?

5 A I am the chairman of Craver, Matthews,  
6 Smith & Company, a direct mail fund-raising firm  
7 in Falls Church, Virginia.

8 Q And how long have you been in business?

9 A Twenty-one years.

10 Q Where did you work before you started at  
11 Craver, Matthews?

12 A Common Cause.

13 Q Okay. What was your position or title  
14 at Common Cause?

15 A I was the director of membership and  
16 fund raising.

17 Q And how long did you work there?

18 A I worked there from the founding day  
19 till 1972, in April.

20 Q When was the founding day?

21 A It was July of 1969.

22 Q Okay. Would you please describe your

1 educational background?

2 A I have a high school degree from  
3 Gettysburg High School, a college degree from  
4 Dickinson College in Carlisle, Pennsylvania, and a  
5 J.D. degree from George Washington University  
6 National Law Center.

7 Q Okay.

8 Mr. Craver, what type of services does  
9 Craver, Matthews, Smith & Company provide?

10 A We raise money and build membership for  
11 progressive public interest organizations, for  
12 political candidates, and for charitable  
13 organizations.

14 Q What is the name of the industry in  
15 which you work?

16 A It's called the -- generally called the  
17 direct marketing industry or the direct mail  
18 fund-raising industry.

19 Q Okay. How many employees does Craver,  
20 Matthews, Smith & Company have?

21 A Sixty-seven.

22 Q Approximately how many clients has your



1 company, Craver, Matthews, Smith & Company,  
2 provided direct mail services for over the years?

3 A In excess of 150.

4 Q Okay. And about what percent of that  
5 total number would be political clients?

6 A From the period 1975 -- correction.  
7 1978 -- I'm sorry. Excuse me. Wrong. From the  
8 period 1975 through 1990, 35 to 40 percent of our  
9 business was political. From the period 1990 to  
10 present, less than 5 percent of our business is  
11 political.

12 Q And about how many clients do you  
13 currently have? The company?

14 A We currently have ten clients.

15 Q Okay.

16 Mr. Craver, would you please describe  
17 step by step the process that your company goes  
18 through in providing services from the time a  
19 prospective client walks in?

20 And assume for the purposes of the  
21 question that the client is a political client  
22 interested in direct mail services.

1           A     Yes.

2                   The first step is to determine the  
3 client's stand on the issues. The firm will only  
4 work for those candidates whose stand on issues we  
5 are concerned with, matches our stand. Once we  
6 understand that, we then begin to understand the  
7 financial demands that the -- that the campaign  
8 will have. How much money needs to be raised over  
9 what period of time.

10                   We then meet among ourselves and decide  
11 whether the -- the campaign should become a  
12 client, and, if so, how we can meet those goals.  
13 We then reduce that to a proposal, which contains  
14 the key elements of the creative approach. How we  
15 would position the candidate or the campaign; what  
16 audiences, markets we would go to; how we project  
17 the returns will come in, in terms of acquiring  
18 new donors to the campaign; how we project the  
19 returns will come in, in terms of repeat  
20 contributions from those new donors over the  
21 period of the campaign.

22                   That set of projections then is part of

1 the proposal which we give to the campaign. The  
2 proposal also contains the contractual -- the key  
3 contractual elements. The pricing, the timing,  
4 the rights of both parties, the -- the termination  
5 steps that would be taken. Notice, that sort of  
6 thing. And once the proposal is agreed to by the  
7 potential client, it is then reduced into a formal  
8 contract, signed, and work begins.

9 Q Okay.

10 Is the process pretty much the same as  
11 you described with respect to political  
12 committees?

13 A Yes.

14 Q Okay.

15 A Yes.

16 Q Okay.

17 Do most of your clients come in with  
18 mailing lists already, or does your company  
19 develop mailing lists?

20 A There are two types of -- of political  
21 clients in our business. One is a candidate who  
22 has never raised money by direct mail before or

1 who does not have a donor list of any type,  
2 whether from direct mail or any other means.

3 And second -- the second type are those  
4 candidates or campaigns or political committees  
5 who have mailing lists and are starting a second  
6 or third or subsequent campaign and have the --  
7 the names of donors to begin with.

8 The company maintains some names of its  
9 own for -- which we use to help start new  
10 campaigns or new causes. It's not limited to  
11 political committees or political campaigns, but,  
12 by and large, the -- if a candidate or a campaign  
13 does not have a mailing list, we will have to rent  
14 names on the open market, and -- or exchange names  
15 on a futures basis, meaning that when the campaign  
16 has some names to pay back, they will pay back  
17 whoever is -- whatever other organization is  
18 exchanging those -- those names.

19 So there are a variety of ways of  
20 acquiring names to send mail to, and the -- the  
21 three basic ones are the -- the direct mail fund  
22 raiser puts up some of the -- some of their names

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1 if they have them. Secondly, the names are rented  
2 on the open market and, third, the names are  
3 exchanged with other political committees or  
4 causes or publications, whoever has direct mail  
5 lists that are suitable for that purpose.

6 Q So when you're talking about an  
7 exchange, then the names that your company already  
8 has would be exchanged with the names from some  
9 other entity?

10 A It might work that way, or we may simply  
11 rent the -- the names to the -- to the campaign,  
12 but some way -- sometimes there is what we call a  
13 three-way exchange, meaning Craver, Matthews,  
14 Smith puts up the names with another -- for -- on  
15 behalf of the candidate with another organization,  
16 gets those names from the candidate, and has  
17 enough names. The committee or the candidate pays  
18 us back in -- in those names.

19 But, normally, we do it as a cash  
20 transaction, as a financial transaction. It's not  
21 -- the practice of three-way exchange is very  
22 rare.

1 Q Okay.

2 Is there a certain point when you would  
3 call a list, a prospect list, a house list, and,  
4 if so, could you describe when?

5 A Yes. There's a very definite  
6 difference. A prospect list is a list of people  
7 who have demonstrated by their past buying or  
8 giving or reading habits an affinity, a likely  
9 affinity for the political committee's or  
10 campaign's point of view, but have not made any  
11 contributions to the campaign.

12 A house list is a list of people who  
13 have made contributions to that candidate, that  
14 campaign or that political committee.

15 Q Okay. What aspects of the process of  
16 providing direct mail services does your company  
17 do in-house?

18 A We do the strategy. We do the creative.  
19 We do the -- the picking of the -- of the mailing  
20 lists. We supervise the production of the  
21 printing and mailing that is done by other firms,  
22 but we oversee it. Bid it, competitively bid it,



1       award the bids, monitor the performance to make  
2       certain that our client is getting what we  
3       bargained for on their behalf. Analyze the  
4       results.

5               We do not handle the money, but analyze  
6       the results of the incoming mail, make  
7       recommendations for continuing the process once  
8       those results have been -- have been analyzed.

9               Q       So does your company function as an  
10       agent for the client?

11              A       Yes.

12              Q       Okay. And is it usual practice in the  
13       industry for companies to enter into agency  
14       contracts with their clients?

15              A       Yes, it is.

16              Q       Okay. Does your company require up  
17       front payments?

18              A       Depends on the -- on the political  
19       committee or the candidate or the campaign. As a  
20       general rule in politics, the -- the process is  
21       far more risky than it is with established  
22       nonprofit organizations or commercial businesses,

1 and therefore the practice normally requires  
2 either up front payment or a very, very narrow,  
3 tight credit extension for 30 days. Sometimes as  
4 much as 60 days if the -- if the people involved  
5 in the campaign are known to us and have -- have a  
6 history of -- of performing on their -- on their  
7 word.

8 But, as a general rule, it -- the  
9 extension of credit is pretty carefully watched  
10 and narrowed. It's -- because campaigns go out of  
11 business usually, and often at the end of an  
12 election cycle they're gone, or at least dormant  
13 for several years, and so it's -- it's pretty --  
14 it's pretty risky.

15 Q Now, just speaking with respect to  
16 political committees --

17 A Sure.

18 Q -- aside from just an overall extension  
19 of credit for mailings and so forth, are there any  
20 up front payments that you absolutely require from  
21 political committees?

22 A Not absolutely. The normal up front

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1 payments are postage, and if mailing list owners  
2 require advance payment, then the client makes  
3 those advance payments.

4 Q How are the billings of the third-party  
5 vendors handled? Like, who do they send invoices  
6 to? How does that work?

7 A There are two procedures we follow  
8 depending on the client's wishes. The -- the --  
9 the process works like this. There is a --  
10 basically a purchase order, equivalent of a  
11 purchase order, issued after we competitively bid  
12 the -- the printing or mail-house work.

13 The bid is let in a form of a purchase  
14 order, or what we call an authorization to  
15 proceed, which the client signs off on.

16 When the bill comes in, it comes in to  
17 us. We check the bill and approve it for payment  
18 if it meets the specifications of the purchase  
19 order and pass it on to the campaign for payment.

20 A second way that is done is that the  
21 campaign puts on deposit with us in a production  
22 account, a sum of money, which we then use to pay

1 the invoices that come in from the -- from the  
2 vendors. The invoices are in the client's name.  
3 They are the -- the -- they're the client's  
4 responsibility. We serve as the -- as the agent.  
5 We charge no agency markup on that. It's -- it is  
6 the price that the vendor charges.

7 Q How are the returns from direct mail  
8 solicitations processed?

9 A They go to what is called a lock box,  
10 and a lock box is a post office box usually where  
11 the mail is picked up and taken to a cashiering  
12 service, where it is opened, the money is counted  
13 and deposited, and the -- the results -- the  
14 tallies are then sent to us, the data, so that we  
15 can analyze the results. A deposit is made each  
16 day.

17 Some campaigns have their own cashiering  
18 operations, in which case the mail goes to them.  
19 The checks are deposited by them, and we get the  
20 data to analyze.

21 Q Is that different from an escrow agent?  
22 What you're describing?

1 A Yes.

2 An escrow agent is somewhat different in  
3 that the money is deposited into an escrow  
4 account. The bills are then paid for out of that  
5 escrow account, and net proceeds, the proceeds  
6 after all expenses have been paid, are released to  
7 the -- to the client. That is a -- that is a  
8 fairly common practice in political campaigns.

9 We do not -- we do not do it, but --  
10 it's simply our practice not to do it. It is a  
11 fairly common practice.

12 Q A bank oversees the lock box?

13 A Not necessarily. It could be the  
14 cashiering operation that's under contract to do  
15 it. It could be a bank. It could be the campaign  
16 itself. Generally the term relates to a secure  
17 area that mail can be received and processed.

18 Q Okay.

19 Who determines the order of payments?  
20 Like among your company, the third-party vendors,  
21 and then the client? Who determines who gets paid  
22 first?

1           A     Normally that's done -- that's done  
2 contractually. If it isn't done contractually,  
3 the agency will decide from the money available  
4 the priority for paying, and in political  
5 campaigns it's -- it's partly the squeakiest  
6 wheel. It's partly who needs to be paid in order  
7 to get the next wave of -- of mail out the door.

8           Q     Where does your company usually fall in  
9 the order of payments? Is there a usual place  
10 that the agency falls like --

11          A     We fall last.

12          Q     And why is that normally the case?

13          A     Because the suppliers we use routinely  
14 for the best prices for our clients, need to be  
15 paid. It's in our interests to keep our suppliers  
16 paid as promptly as possible, because their prices  
17 are lower, and it is also far better relationships  
18 with our suppliers for them to know that we will  
19 work to see that they're paid before we are paid.

20                It breeds more trust in a campaign  
21 situation where things have to be done quickly.

22                That trust is -- is very important,



1 because you're asking people to work all night.  
2 You're asking people to work on weekends, and to  
3 -- to put a different priority on that is to  
4 undermine that.

5 Q You're referring to campaigns. Is there  
6 any difference when you're dealing with political  
7 committees?

8 A No. No. The -- the principal  
9 difference from a creditor standpoint between a  
10 political committee, provided it's a longstanding  
11 political committee, and a campaign, is the  
12 political committee has a more institutional  
13 dimension, so that in -- if it hits some rough  
14 water in one year, chances are it will recover and  
15 be a good -- a good paying client in another year,  
16 so that the suppliers and agencies both tend to  
17 take a long view of political committees that they  
18 don't take of campaigns.

19 Campaigns normally are two years, 18  
20 months in duration, and are -- are over. Whereas  
21 a political committee tends to go on year after  
22 year after year. So, depending on the size,

1 depending on its behavior, there's more tolerance  
2 for tough times among suppliers.

3 Q Okay.

4 You stated that usually the third-party  
5 vendors are paid first and then the agency.

6 A Right.

7 Q If the returns are not that great and  
8 you don't have enough money there to pay  
9 everybody, including to give money to the client,  
10 is there a point when the client may not receive  
11 any of the income?

12 A Yes. Usually the -- the agreements with  
13 -- with campaigns and political committees and  
14 basically all clients is that expenses will be met  
15 first, and the proceeds then -- the remaining  
16 proceeds then go to the client.

17 Q Is that usual in the industry?

18 A Yes.

19 Q Okay.

20 And if there has been a shortage in the  
21 returns and you have invoices that have not been  
22 paid, are older invoices paid first? Are more

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1 recent invoices, or is there a --

2 A I don't know that there's a general  
3 rule. Our practice is to pay the older invoices  
4 first, unless there was something in the current  
5 situation that requires payment in order to  
6 proceed with the work of the campaign.

7 Mailing lists would be a good example.  
8 If you can't get a mailing list, you can't  
9 proceed, so the list owners tend to be paid right  
10 after the post office. The post office, of  
11 course, does not extend credit, so they get paid  
12 first.

13 Q Okay.

14 Does your company have a standard  
15 contract?

16 A Yes, it does.

17 Q Okay.

18 MS. LIGON: I'd like to have this  
19 marked.

20 (Craver Deposition Exhibit No. 1  
21 was marked for identification.)

22 (Discussion off the record)

1 BY MS. LIGON:

2 Q Okay.

3 Mr. Craver, I'm handing you what has  
4 been marked Exhibit No. 1. Would you tell me what  
5 it is, please?

6 A This is a standard contract of Craver,  
7 Matthews, Smith & Company.

8 Q Do the handwritten stars in the margin  
9 beside certain provisions, indicate that those  
10 provisions are not usually and normally included  
11 in contracts in the direct mail industry?

12 A They are not standard in political fund  
13 raising.

14 Q Okay. And did you place those stars in  
15 the margin?

16 A Yes, I did.

17 Q Would you please explain how each star  
18 provision differs from the usual and normal  
19 practices in the direct mail industry, please?

20 A In the provision to provide  
21 end-of-mail-period reports, which analyze and  
22 evaluate the productivity of the mailings as well

1 as the functional allocation of program costs,  
2 that -- the detailed reporting of the way in which  
3 direct mail programs work for political campaigns  
4 and committees is generally not -- not done.

5 It is a far more generalized way of  
6 dealing with it, partly because the process is  
7 considered by some contractors as proprietary  
8 information. Partly because it simply is an extra  
9 level of work that many don't want to engage in.

10 The provision that indicates that all  
11 printing, computer personalization, mail house and  
12 other related production services for which CMS is  
13 responsible will be managed by CMS and  
14 competitively bid by a third-party production firm  
15 chosen by CMS to provide production services.

16 CMS and the production firm will strive  
17 to obtain the lowest reasonable cost by purchasing  
18 in large volume for its clients' combined needs.  
19 With reasonable allowance for differences in  
20 delivery deadlines and work quality, the lowest  
21 bidder will be recommended.

22 All such work will be contracted by the

1 production firm only upon receipt of written  
2 authorization signed by the client. The  
3 production firm will send an itemized invoice for  
4 each mail directly to the client.

5 This provision is not standard in most  
6 political fund raising where the agencies control  
7 the source and the allocation of production. The  
8 use of competitive bidding is as rigorous a  
9 function as this is not generally done in the --  
10 in the political part of the -- of the industry,  
11 and the direct billing to clients is -- is  
12 normally not done.

13 Q Okay.

14 A The provision that all respondent  
15 information generated as a result of the direct  
16 mail program contemplated by this agreement shall  
17 be the property of the client. The client shall  
18 have the exclusive right to sell, rent or exchange  
19 names identified as those of the client.

20 All data relating to the performance of  
21 these packages and the performance of client's  
22 fund-raising program as a whole is the client's



1 exclusively. CMS shall not release the data in  
2 part or in whole without the expressed consent of  
3 the -- of the client.

4 In political fund raising there are a  
5 variety of agreements on the ownership of data and  
6 names. Most agreements provide for shared  
7 ownership. Some provide for ownership by the  
8 contractor. The -- the protection of data and the  
9 -- and its use solely by the client is more rare  
10 than common in the political direct mail business.

11 Q Okay.

12 So co-ownership, then, of the mailing  
13 list by the agency and the client is not usual in  
14 a direct mail industry?

15 A No. The co-ownership is -- is -- is not  
16 unusual -- I don't know whether it's usual. It's  
17 not unusual.

18 Q Okay.

19 A What is -- what is unusual is not making  
20 any claim on -- on the data. Most contractors  
21 want some claim on the data, and this -- this  
22 particular contract, or our standard contract,

1 does not make a claim on that. That's what makes  
2 it different, but it is not uncommon in the  
3 industry to want part ownership or at least use of  
4 the data.

5 Q Okay.

6 A The provision that the client is  
7 responsible for the receipt and secure handling of  
8 the dues and contributions resulting from the  
9 services provided by CMS.

10 This responsibility includes assuring  
11 that donations are accurately recorded and they  
12 are deposited to the client's bank account in a  
13 timely fashion. The client understands this  
14 contract with CMS does not in any way oblige the  
15 client to employ cashiering and management  
16 services. The client also understands that CMS  
17 has a financial interest in cashiering and  
18 management services.

19 This provision is different than the  
20 standard practices for two reasons. One, in  
21 political campaigns the -- the contractor almost  
22 inevitably has some control of the proceeds as a

1 matter of protecting creditors' rights. We do not  
2 do that.

3 And, secondly, this discloses our  
4 ownership in any part of the production or money  
5 handling process, and, sadly, it is common that  
6 ownership or interest in part of the production  
7 chain is not -- is not disclosed often. So that  
8 makes this exception.

9 Q Okay.

10 A To the provision on page 9 that the  
11 agreement may be terminated by either party with  
12 60 days written notice. The client shall,  
13 however, continue to be responsible for the  
14 appropriate costs associated with all the work and  
15 activities of CMS performed on its behalf through  
16 the effective date of termination.

17 The -- the short-term nature of the  
18 notice for termination and a termination itself is  
19 unusual.

20 Generally, in political fund raising,  
21 the contracts are for fixed terms. Often fairly  
22 onerous terms. That, if it is terminated, the

1 list reverts to the contractor. If it is  
2 terminated, there are certain financial penalties.  
3 The -- the concept of terminating it and being  
4 paid only for this -- for the services incurred to  
5 the point of termination is -- is not that  
6 typical.

7 Q So, usually direct mail contracts  
8 include some provision for the duration of the  
9 contract, and usually what is --

10 A Usually it's a fixed term. It may be  
11 the entire term of the campaign, a 2-year term or  
12 an 18-month term. It may have penalties that, for  
13 example, if any of the copy created in the course  
14 of the campaign is -- is used by anyone else after  
15 the contract is -- is ended, the agency gets paid  
16 a -- a certain fee or commission for the use of  
17 that copy.

18 If the names acquired while under  
19 contract are used, the agency gets a -- a part of  
20 that -- of that money. There normally on -- on  
21 campaigns is a -- a sort of afterlife effect of  
22 these contracts.

1 Q And is that the same with respect to  
2 political committees?

3 A Generally.

4 Q Okay.

5 And you're saying that the short 60-day  
6 termination period --

7 A Is unusual.

8 Q Is unusual? What is usual?

9 A What is usual is 120 days, 90 days.  
10 Sometimes it goes for a year with written notice.  
11 Otherwise it extends automatically for another  
12 term.

13 Q Okay.

14 A Those are all the asterisked portions of  
15 that contract.

16 Q Thank you. Mr. Craver, when you were  
17 describing the provisions in the contract, you  
18 used a term "contractor," and I just wanted to be  
19 clear that -- is a contractor the same thing as  
20 the agency?

21 A By contractor I was drawing a synonym  
22 with agency, yes.

1           Q     Mr. Craver, how does your contract  
2 provide for the agency compensation? Is it a per  
3 piece, or is it a retainer, or how is it provided  
4 for?

5           A     The usual way is a fee that is -- that  
6 we base on time. The client is not charged by  
7 time, but we estimate how much time, what type of  
8 personnel it will take us to perform the service,  
9 and then we quote a monthly fee to do that.

10           A second way that it -- it is done that  
11 we do it is to do a combination of monthly  
12 retainer plus a management fee of so much per  
13 thousand pieces of mail, mailed up to a certain  
14 point where we have recovered our costs, and then  
15 we begin reducing that -- that fee. The practices  
16 in the industry also include charging a per-piece  
17 fee in the absence of any other fees.

18           I don't know whether there is any  
19 contingent fee arrangement, such as a percentage  
20 of the money -- of the money raised. That,  
21 generally, in the fund-raising industry is  
22 considered an unethical practice, and I don't -- I



1 don't know whether it exists in -- I've never seen  
2 it in recent contracts in political fund raising,  
3 but I don't know that for certain.

4 Q And what do the fees of your company  
5 cover?

6 A The fees -- the fees of the company  
7 cover the personnel who manage the account. That  
8 is, the people who set the schedule, who oversee  
9 the -- the subcontractors, who coordinate the work  
10 inside the company and between the company and the  
11 client.

12 It involves the fees for creative -- for  
13 the preparation of letters, brochures, mailing  
14 packages, and it involves out-of-pocket expenses  
15 such as long distance telephone, travel, printing  
16 if there is any printing that's not direct  
17 mail-type of printing.

18 All other out-of-pocket expenses such as  
19 mailing lists, printing are -- are -- are  
20 contracted for in the client's name, and the  
21 client pays them.

22 Q Is profit built into your fees?

1 A Yes. Yes.

2 Q Okay.

3 How does your company calculate its  
4 profit? Is it a certain fixed amount that's  
5 included into the fees, or --

6 A I wish we were that rational. We  
7 calculate it -- we try to calculate it based on  
8 the amount of time and costs that we're going to  
9 put into it and then add 15 to 20 percent on top  
10 of that.

11 The difficulty with political work is  
12 that you -- you can't predict time very easily,  
13 because you can't predict the events surrounding  
14 politics, so that, often the profit margin  
15 vanishes, because it takes more time. Sometimes  
16 it's more profitable because it took less time  
17 than the normal political effort took and,  
18 therefore, it's -- it's better.

19 Q Okay.

20 Is it usual in the industry for direct  
21 mail companies to have profit built into their  
22 fees?

1 A Yes.

2 Q And is the way that your company  
3 calculates its fees with a certain amount for the  
4 cost and then 15 to 20 percent over that, I think  
5 you said. Is that pretty usual in the direct mail  
6 industry?

7 A I -- I don't know how others price -- do  
8 their calculations.

9 Q In the direct mail industry how do you  
10 determine when there has been a loss? Do you do  
11 it on a per-mailing basis? Or do you look at the  
12 total contract after the conclusion and then  
13 determine whether it has been a loss?

14 A You do it both ways. There is -- for  
15 agencies who are putting up money to do the  
16 printing and the -- the postage and everything  
17 else, the loss -- the loss is evident. Mailing by  
18 mailing. Either the mailing made money or it  
19 didn't make money, and the agency recovered its  
20 costs or it didn't recover its costs.

21 For agencies that work only on fees,  
22 it's a little more difficult to tell until the end

1 of the campaign.

2 Did we put so much effort into this that  
3 we neglected other clients or shorted the  
4 development of new business for the future? What  
5 were the opportunity costs? What were our  
6 out-of-pocket costs in terms of the amount of  
7 personnel we had to -- had to put into this? Did  
8 we so underestimate this that it turned out to be  
9 costing?

10 So there are both personnel costs and  
11 very -- in some cases, quite substantial  
12 out-of-pocket costs if the agency is front-ending  
13 the mailing program itself.

14 Q And if an agency is front-ending the  
15 mailing program, what all is considered income to  
16 the company? Would that include the money that  
17 they received in terms of the returns of the  
18 solicitations? Money perhaps from list rental  
19 income? What all might that include?

20 A The proceeds from a direct mail program  
21 for a company that -- that puts the money in up  
22 front and pays all the costs would be whatever

1 markup they put on the process of extending  
2 credit. If, for example, a mailing cost \$500 for  
3 a thousand pieces to send out, in terms of actual  
4 cost, the agency might charge \$600. Therefore,  
5 the \$100 would be income to the agency.

6 If the -- if the contract provides for  
7 the ownership or the use of the -- of the mailing  
8 lists for rental purposes, then the rent income  
9 from that mailing list would be income to the --  
10 to the agency.

11 If the contract permits the -- the  
12 agency to use data from the campaign and it can  
13 use that data to enhance its other mailing lists  
14 or enhance its other work, that is -- that is  
15 income to the -- to the company.

16 Q For companies that have co-owners and  
17 get all the money that you just described from  
18 rental of the mailing lists and the other things  
19 that you just described, do they normally  
20 calculate the fact that they're going to receive  
21 this money in setting their profit margins? Do  
22 you know?

1           A     They should. They should. We --

2                     Historically, Craver, Matthews, Smith  
3     has co-owned mailing lists not of political  
4     committees, but of campaigns; and when we do that,  
5     that is calculated as part of our fee. Often it  
6     is the only fee we can get, the -- basically the  
7     residual benefit of a campaign is its mailing  
8     list; and that is the way a company like ours  
9     sometimes has to be paid. Doesn't --

10                    There's no income during the course of  
11     the campaign, so we take it later in the form of  
12     the mailing list rental, and that's -- that's  
13     calculated in up front.

14           Q     And is that usually done in the direct  
15     mail industry?

16           A     Yes. I think it's -- I think it's more  
17     usual than unusual. It's -- particularly where  
18     political campaigns are concerned. Where  
19     political committees are concerned, it is more  
20     unusual to -- for an agency to have access to that  
21     data and be able to use it for its own purposes,  
22     and within that definition of political committee,



1 the older and more established and larger a  
2 political committee is, the more unusual it would  
3 be for a contractor to have a benefit of that.

4 For example, the -- the Republican  
5 National Committee or the Democratic National  
6 Committees are -- are long established, large,  
7 direct mail programs. It would be highly unusual  
8 if the contractors had -- had a beneficial  
9 interest in the mailing lists of something like  
10 that.

11 On the other hand, an ad hoc political  
12 committee that was set up for, oh, let's say the  
13 committee against or for NAFTA, that would be less  
14 unusual to have an interest in that mailing list,  
15 because it is a more risky proposition for the --  
16 for the contractor.

17 So the more -- I think the general rule  
18 is, the more established the political committee,  
19 the less general or less usual it would be for a  
20 contractor to have a beneficial interest in those  
21 mailing lists.

22 Q Okay.

1           And would it be appropriate for me to  
2 characterize a beneficial interest in the mailing  
3 list as co-ownership of the mailing list?

4           A     Sure. That's one. Sure.

5           Q     Okay. What does co-owning a mailing  
6 list entitle a company to do with the list?

7           A     Depends on the terms of -- of the  
8 ownership or the -- or the tenancy -- I don't know  
9 whether it's ownership or joint tenancy or what  
10 exactly the legal definition would be of the  
11 property terms; but it would enable -- it  
12 generally enables the contractor or the agency to  
13 use the mailing list as though it were its own for  
14 rental and exchange purposes.

15                   Sometimes the agreement is that it will  
16 use it independent but in a nonconflicting way  
17 with the political committee's or the campaign's  
18 interest in it, so they might divide the market.

19                   Let's say the political committee or  
20 campaign wanted to have the market -- the  
21 political market for its rentals. The agency  
22 might take the advocacy market or the publications

1 market for its rentals.

2 But, fundamentally, the purpose is to  
3 generate income from that property so that the --  
4 the -- the goal is to make it as usable as  
5 possible from the agency standpoint.

6 Q Does a company's co-ownership of a  
7 client's list automatically give the company the  
8 right to rent the list and receive all of the  
9 list's rental income?

10 A Not automatically. It should -- in our  
11 case, at least, we specify how it will be -- it  
12 will be used, but in -- in many ownership  
13 situations, I would imagine -- I don't know for a  
14 fact -- that ownership is ownership. You can do  
15 with it what you want.

16 Q And direct mail companies, do they  
17 potentially stand to gain substantial income just  
18 from the co-ownership of mailing lists alone?

19 A Oh, absolutely. Absolutely. A mailing  
20 list -- a good political mailing list is worth at  
21 least a dollar a name per year for five or six  
22 years to the -- to the agency or to the political

1 committee. So if there are, for example, 100,000  
2 names, that's a half a million dollars income for  
3 whoever owns it.

4 Q And you said that your company under  
5 certain circumstances or with respect to certain  
6 political committees, depending on their  
7 background, does extend credit to political  
8 committees?

9 A We have -- we have in a few instances.

10 As a general rule, we do not. As a --  
11 as a matter of -- as a matter of practice  
12 sometimes we have to, and we -- we are -- so I  
13 guess we're in the -- you know, the custom of --  
14 the trade and custom of doing it if we -- if we  
15 have to. I think the last one, frankly, we did it  
16 for -- for the -- the John Anderson for president  
17 campaign in 1980.

18 Q Is it a usual practice in the industry  
19 to extend credit to political committees?

20 A Among political -- those firms that  
21 specialize in political fund raising, it is.

22 Q Okay.

1 I think we covered this a little bit,  
2 but could you just please restate for me what  
3 factors your company considers in determining  
4 whether or not to extend credit to a particular  
5 political committee?

6 A The -- the principal factors in  
7 considering extension of credit are the reputation  
8 of the people involved in the campaign. For  
9 example, have we worked with them before? Has  
10 their word been good? Are they good managers of  
11 money? Of process?

12 Secondly, how much credit is going to be  
13 extended? The amount of credit becomes important.  
14 It's one thing to extend credit of a limited  
15 nature. It's quite another to expose suppliers to  
16 enormous risk.

17 The third is, what are -- what is the  
18 length of time the campaign has to -- or political  
19 committee has to recover the investment and repay  
20 the -- the credit?

21 For example, political committees that  
22 deal with long-term campaigns generally are far

1 more creditworthy, because there are several years  
2 or even multiple years that that money can be paid  
3 back. Those with shorter life spans, generally  
4 election campaign committees, are far more credit  
5 risky.

6 Q Okay.

7 In an instance when your company has  
8 extended credit, what does your company do when a  
9 mailing for a client results in a loss of income  
10 for the company?

11 A As a general rule, the -- the -- you  
12 take that immediate loss, and the subsequent  
13 mailings begin to -- to pay it back. We have  
14 never been in the situation where there was an  
15 ultimate -- an ultimate loss. Should there be, we  
16 would write the -- we will take the bad debt and  
17 write it off after pursuing the remedies. I mean,  
18 there's not a lot of remedy in most political  
19 committees, because there isn't any assets.

20 Q Okay.

21 A And that's -- that's usually agreed to,  
22 by the way, in the -- in the agreement on these --



1 on these contracts -- is that, what will happen in  
2 the event of default? In the event of default on  
3 any of the mailing lists, rental rights revert to  
4 the contractor, or the ownership of the mailing  
5 list reverts. Proceeds from mailings in the  
6 future revert, so there's an attempt to recover  
7 money, but the -- the fact is that it may not be  
8 recoverable.

9 Q Okay.

10 What factors do you usually consider in  
11 determining when to discontinue mailings on behalf  
12 of a client?

13 A When it appears that the mailings will  
14 not generate sufficient future income for the  
15 client.

16 For example, if a client is two years  
17 away from election day, it is perfectly reasonable  
18 to invest or subsidize the acquisition of new  
19 donors. For example, let's spend \$30 to get \$20  
20 because that \$10 investment or subsidy can be  
21 recovered over the next year, turned into a  
22 profit, and then there's one more year to solicit

1 that donor for income for the client.

2 At some point in that time continuum,  
3 there is not enough time left to recover that  
4 investment, so that we cease the practice of  
5 mailing at a loss or a subsidy, because that  
6 recovery won't occur, and as the election day  
7 nears and the campaign heats up, it's important  
8 that the net money -- the money flow to the  
9 campaign.

10 So there's a timing -- it's like any  
11 other investment procedure. There's a time to  
12 invest and wait out the return. After a certain  
13 period in politics, you're so close to the event  
14 that you can't make that investment anymore, and  
15 you must focus on reaping the reward from what has  
16 already been built in the past investments. So  
17 it's a timing issue.

18 Q Is that any different for a political  
19 committee?

20 A Yes. A political committee, again the  
21 timing is -- is different. If it's an established  
22 political committee that's going to be around for

9604371935

1 a long time, you can continue taking a loss on  
2 part of its program, because that loss will either  
3 convert to profit down the line -- the best  
4 example is the acquisition of new members or  
5 donors for a political committee. In year one you  
6 can sustain the loss because you have the new  
7 donor. Year two, you get the money back. Year  
8 three, you make a profit.

9 So if you view that over a three-year  
10 period, it is a defensible and wise, in fact,  
11 investment decision.

12 If you would mail for a political  
13 committee continuing to lose money, that doesn't  
14 make sense unless it is advertising money, not  
15 fund-raising money. It's conceivable that you can  
16 put direct mail out for a political committee that  
17 is aimed at changing public opinion or persuading  
18 voters or doing something other than raising  
19 money; but that's not a fund-raising investment.  
20 That is -- that is advertising and wouldn't be  
21 measured by the same investment standard.

22 Q With respect to political committees and

1 the question of when you discontinue mailings, is  
2 there any -- this may be a little difficult to  
3 say, but is there any, like, specific time frame  
4 that you might say, like, well, after three  
5 mailings that were unsuccessful, we would stop?

6 You know, if it's in the second year and  
7 we've already -- I mean, is there any sort of  
8 generally formula type --

9 A It's difficult to -- to come up with --  
10 to state a general -- a general rule. It depends  
11 -- the answer depends on what the mailings are  
12 intended to do. If the -- if a mailing is  
13 intended to acquire new donors or new members at a  
14 certain rate and a certain cost, if it doesn't  
15 work, you stop it then.

16 If it -- if it is intended to make money  
17 from the -- from the outset and it doesn't, you  
18 would stop it then. In fund raising, each type of  
19 mailing has a -- a set of criteria that is applied  
20 to it that determine whether you continue or not  
21 continue.

22 Q Okay.

1           And you said that when mailings are  
2 unsuccessful and the client still owes a debt,  
3 that your company would generally pursue certain  
4 things to --

5           A     Pursue.

6           Q     To recover?

7           A     Pursue normal creditors' rights, unless  
8 there was some provision in the contract that --  
9 where we would have agreed to advance -- in  
10 advance to not pursue it.

11           I can't imagine the circumstances under  
12 which that would occur, but -- that would be  
13 pursued.

14           Q     And how would it be pursued?

15           A     It would be pursued under the contract  
16 by the -- the rental of the -- of the mailing  
17 list. By the -- by income received from future --  
18 future mailings, although we have ethical problems  
19 with mailing to the public asking for money when  
20 the money is going to be used to retire debt,  
21 unless it's clearly stated by the committee that  
22 that's the purpose.

1           And after that, if there -- if we  
2           suspected that there were assets that weren't  
3           being made available, we would pursue the legal  
4           remedies for that. But if there -- if there are  
5           no assets and everything -- everything ethical has  
6           been exhausted, then that's it. We've -- we would  
7           simply write it off as a -- as bad debt.

8           Q     Okay.

9                     Has your company ever, in an effort to  
10           reduce the debt of a client, amended the contract  
11           reducing the fee --

12          A     Yes.

13          Q     -- for services?

14          A     Yes.

15          Q     Is that normally done in the --

16          A     I don't know how normal it is. I -- I  
17           -- my guess is that those firms that do this work  
18           for ideological reasons, which is the basis on  
19           which we do it, would do that. Firms that are in  
20           it commercially or purely commercially, probably  
21           wouldn't do that. There's a quite different  
22           motivation in this business than exists in a lot



1 of purely commercial businesses because of the  
2 political nature of it.

3 The firms generally tend to be run and  
4 founded by ideological people who do this partly  
5 out of profit motivation and partly out of the  
6 political ideology, advancement of the political  
7 ideology they're coming from. So it's difficult  
8 to say, but I would guess the general rule among  
9 political fund raisers is that yes, they would  
10 reduce the fee in order to help the campaign, in  
11 order to get it through a difficult -- a difficult  
12 period.

13 Q And would that be the same with respect  
14 to a political committee?

15 A Yes. Yes. I mean, it would be -- be  
16 far less -- again, depends on the size of the  
17 political committee, but you would be far less --

18 I would be far less willing to reduce it  
19 permanently if it were a big political committee.  
20 I might defer part of the fee, but big,  
21 longstanding political committees have a thousand  
22 and one ways in which they get themselves into

9604371900

1 trouble financially and an equal number of ways in  
2 which they get themselves out of trouble  
3 financially, so that one bad year doesn't  
4 necessarily mean forever.

5 So I -- I -- I tend to be pretty --  
6 pretty careful about not giving them a lot in --  
7 in that situation.

8 Q Okay.

9 If your company co-owned the client's  
10 mailing list, would you apply income received as a  
11 result of the co-ownership to the client's  
12 outstanding debt?

13 A We do.

14 Q Okay. And even if that's not provided  
15 for in the contract --

16 A Yes.

17 Q -- would you do that?

18 A Yes.

19 Q And is that usually done in the industry  
20 that way?

21 A I doubt it, but I don't know for  
22 certain.

1 Q Okay.

2 Do you have any idea why a company that  
3 co-owned mailing lists and earned a substantial  
4 amount of money as a result of the co-ownership of  
5 the mailing lists would not apply the income  
6 received from that co-ownership to a client's  
7 outstanding debt?

8 A I could -- I can speculate, but it --  
9 they might believe that the client will have the  
10 -- the capacity, long-term, to pay that debt, and  
11 therefore why -- why give up two -- basically two  
12 income streams?

13 They might have -- they might have  
14 agreement with the -- with the client that the  
15 debt will be -- will be interest bearing, and if  
16 it's a longstanding political committee, it's  
17 likely to be paid, and so is the contractor, so  
18 why -- why sacrifice that and sacrifice the income  
19 from the mailing list at the same time?

20 It may be to -- I can't think -- I can't  
21 imagine anyone driving their own client into --  
22 into bankruptcy, but stranger things have happened

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1 in politics.

2 I think the main -- the principal  
3 motivation would be -- would be the desire for  
4 more -- for more revenue under the terms of the --  
5 of the contract.

6 Why give up short-term what you can get  
7 long-term?

8 Q And the contract of your company  
9 provides that, in the event there's debt, list  
10 rental income shall be used to pay down that debt?

11 A That's right.

12 Q If there was a contract that authorized  
13 the company to use list rental income to pay down  
14 a debt --

15 A Right.

16 Q Do you have any idea -- I mean,  
17 different from what you just discussed -- why the  
18 company wouldn't use the list rental income? If  
19 they were authorized to use it to pay down the  
20 debt, why they wouldn't use it to pay down the  
21 debt?

22 A Oh. No. Unless they were using the --

1 unless they were using the income to do more  
2 investment for the -- for the client or to -- I  
3 mean, I can't see why they would. There's not a  
4 business reason to -- to do that.

5 Q Has your company ever filed suit to  
6 collect a debt from a client?

7 A No. Oh. From a political client? We  
8 have from a client, but not a political client.  
9 Okay.

10 Q Okay.  
11 How many times have you filed suit from  
12 a client?

13 A Once.

14 Q Once. And when did that occur?

15 A In 1994.

16 Q And what was the amount of debt owed by  
17 the client?

18 A 64,000.

19 Q And how long had that debt been owed?  
20 At the time that you filed suit?

21 A Three years.

22 Q All right. Okay.

1 Mr. Craver, I'd like for you to consider  
2 a specific situation.

3 A Yes.

4 Q And I'll be asking you some questions  
5 based on this scenario.

6 A Okay.

7 Q A client has a five-year contract with a  
8 direct mail company for carrying out a direct  
9 response fund-raising program. At the end of the  
10 second year of the program, the client's debt was  
11 only 13 percent of its income. At the end of the  
12 third year, the client's debt was 300 percent of  
13 its income, and at the end of the fourth year, the  
14 client's debt was 533 percent of its income.

15 What would be your initial response to  
16 that scenario?

17 A My initial response is, what in the  
18 world is going on here? The -- there is no --  
19 there is no pattern here that is usual, in terms  
20 of making investment in building a donor base or  
21 building an income structure for a client.

22 The normal process is the debt would be



1 500 times income in the first year, 300 times in  
2 the second year, and none or little in the -- in  
3 the third year.

4 This is -- this is going in the reverse  
5 -- in the reverse order, and what the -- what the  
6 reason could be, I can only -- I can only  
7 speculate, but if it -- among -- I mean, among the  
8 things that could be happening is that the  
9 political committee could be being used by the  
10 contractor to build a mailing list or to build the  
11 -- to do something that, if the contractor is  
12 funding it, is a potential transfer of political  
13 money for purposes other than fund raising.

14 There is no legitimate five-year  
15 fund-raising goal that is being met in this  
16 situation you've described.

17 Q Okay.

18 At what point would you have  
19 discontinued mailings on behalf of this client?

20 A I would have -- I would have  
21 discontinued it certainly by the end of the second  
22 year as I saw the trend going up, assuming that

9604371996

1 the -- that the goal was at the end of five years  
2 to -- to have a substantial body of net income.  
3 The difficulty here, in terms of net income, is  
4 that as the debt increases, the -- it is going to  
5 be extended out.

6 It will be pretty near impossible to  
7 recover the debt and to provide the political  
8 committee with -- with net income. So the -- the  
9 -- if the purpose was as I assume it is, fund  
10 raising, then that's not being met, so as soon as  
11 I saw that, I would either change the -- the  
12 program or discontinue the contract.

13 Q Okay.

14 Please keep in mind this scenario, and  
15 please share with me how you would respond to the  
16 following argument that, as a result of a  
17 company's co-ownership of the mailing list created  
18 pursuant to the contract with the client, the  
19 company has continued to earn significant net  
20 dollars and expects to do so over the next four  
21 years.

22 List rental income earned from the

1 mailing list of 128,000 names and new accounts  
2 produced as a result of publicity over the project  
3 has more than offset the more than \$1 million owed  
4 to the company.

5 What do you think of that argument?

6 A What do I think of it as an argument in  
7 defense of the practice? Or --

8 Q Okay.

9 An argument in response to the scenario  
10 that I shared with you earlier? And if you need  
11 me to go back over any of it --

12 A Yes. I think so.

13 Q Okay.

14 I'll go over the scenario first, and  
15 then I'll go back over the argument.

16 The scenario is a client has a five-year  
17 contract with a direct mail company for carrying  
18 out a direct response fund-raising program. At  
19 the end of the second year of the program, the  
20 client's debt was only 13 percent of its income.  
21 At the end of the third year the client's debt was  
22 300 percent of its income, and at the end of the

1 fourth year, the client's debt was 533 percent of  
2 its income.

3 And the argument is that, as a result of  
4 the company's co-ownership of the mailing list  
5 created pursuant to the contract with the client,  
6 the company has continued to earn significant  
7 dollars, net dollars, and expects to do so over  
8 the next four years.

9 List rental income earned from the  
10 mailing list of 128,000 names and new accounts  
11 produced as a result of publicity of the project  
12 has more than offset the more than \$1 million owed  
13 to the company.

14 A On the -- on the face of it, it doesn't  
15 -- it doesn't ring true, the -- the company's  
16 statement that it -- that it has benefited from  
17 this practice. They've put together with the  
18 conjunction "and," the statement of rental from  
19 mailing lists and income from referrals or from  
20 new business.

21 The fact is that, 128,000 names are not  
22 going to produce a million dollars, and how much

1 revenue is produced by new business attributable  
2 to that, I -- I don't know how that's -- how  
3 that's measured. That -- that in a -- in a -- in  
4 a -- a business like this is not a defensible  
5 statement of -- of -- of a -- of a sound business  
6 nature.

7 It sounds -- it sounds pretty conjured  
8 up, pretty phony to me, frankly.

9 Q Mr. Craver, are you familiar with the  
10 term "first-generation list rental income"?

11 A No.

12 Q Okay.

13 Now, you may have covered this in the  
14 answers that you have given previously, but I just  
15 want to be sure I have everything, so I'm just  
16 going to go through a few more questions; and they  
17 relate to a company's co-owning mailing lists with  
18 their clients.

19 Okay.

20 Is it a usual and normal practice for  
21 such a company to offset a client's debt by actual  
22 rental income from the mailing lists?

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1           A     It is our usual practice. I don't know  
2 whether it's the industry's usual practice.

3           Q     Okay.

4                     Is it a usual and normal practice for  
5 such a company to offset a client's debt based on  
6 an increase in the value and size of all other  
7 company client lists that obtain new donors from  
8 their mailings to the list?

9           A     Absolutely not.

10          Q     So that's not usual?

11          A     No. I mean, that's not -- that's not  
12 usual. That's -- that's not usual in our case.  
13 It is not usual in a fundamental description of --  
14 of the capitalism, of business. No. I mean --

15          Q     Okay.

16                     And does that have anything to do with  
17 the fact that when you co-own a list, the list is  
18 your own list as the agency and not something that  
19 then you can -- the income generated from that,  
20 that you can then go back and offset the client's  
21 debt with? Or do you understand?

22          A     Yes. I understand what you're -- I



1 understand what you're saying.

2 It would -- it would -- it would be like  
3 Time Warner saying the money we lose on People  
4 Magazine, we lost because we're in the cable  
5 television business, and we can -- the fact that  
6 we publish People Magazine has helped us put cable  
7 sites out there, and we are making more money than  
8 ever.

9 I mean, it says that any activity that a  
10 company does in political fund raising is  
11 defensible as long as that company is -- is  
12 profitable. And the -- the logical extension of  
13 that is that -- that any -- any company that wants  
14 to get into the political fund-raising business  
15 can use its entire assets to -- to enter politics  
16 and defend what is -- what would be, by any  
17 logical measure, an illegal campaign contribution  
18 on the basis that it's -- it's a normal trade and  
19 business practice. It isn't, and the -- I find  
20 that just very far-fetched.

21 Q Okay.

22 And one more question along those lines.

1 Is it a usual and normal practice for a  
2 company that co-owns the mailing list to offset a  
3 client's debt based on an overall across-the-board  
4 increase in business volume due to the increase in  
5 the size of all client mailings for those who have  
6 mailed a list?

7 A No.

8 Q Can income resulting from the  
9 co-ownership of mailing lists be substantiated?  
10 Can it be verified?

11 A Absolutely. Absolutely. The -- the --  
12 a mailing list is -- is measurable each time it is  
13 run, meaning, you can count the number of names  
14 that were used, by whom, how much they paid.

15 It's an industry that -- that keeps very  
16 careful records of usage to avoid duplication, to  
17 schedule the proper -- the proper usage, and  
18 unless the -- the practices within an agency are  
19 -- are just so shoddy or deliberately  
20 misrepresentative, yes, then -- the normal trade  
21 and custom is to keep meticulous track of the use  
22 of mailings.

1 Q So in your opinion, is the company's  
2 income resulting from the co-ownership of a  
3 client's mailing list something that the company  
4 can easily misrepresent?

5 A Not easily. They can -- I guess they  
6 could misrepresent it, but there are normal  
7 standards that would be applied. What is income  
8 from co-ownership, that would be very difficult to  
9 misrepresent if the information were -- were put  
10 out to any person in this -- in this industry who  
11 was used to the practices.

12 Q Okay.

13 (Recess)

14 BY MS. LIGON:

15 Q Mr. Craver, before we move on from this,  
16 I'd like to clarify one thing.

17 Is it a usual and normal practice in the  
18 direct mail industry for companies to co-own a  
19 mailing list of political committees?

20 A Yes. Oh, of political committees? No.

21 Q Okay.

22 A No. Now, let me -- let me -- I want to

1 be clear what -- what you mean when you say  
2 political committees. I mean, a campaign is a  
3 political committee.

4 Q Okay. Not a campaign.

5 A Not a campaign?

6 You're talking about something like the  
7 -- the Democratic, Republican National Committees  
8 or the Senate committees or that sort of thing?  
9 Or --

10 Q Or PAC's. Political action committees.

11 A No. Normally not.

12 Q Normally not. Okay.

13 Mr. Craver, are you familiar with  
14 Response Dynamics, Incorporated?

15 A No. Let me correct that. I mean, I'm  
16 not sure that -- I'm not sure that I'm not  
17 familiar. There's -- one of the problems with  
18 this industry is that it has these generic names  
19 they put together like creative duplicating and  
20 Response Dynamics, and why --

21 Q Okay.

22 A There are -- I generally associate

1 companies with people. I mean, there's -- I --  
2 the name rings a bell, but I don't -- I don't know  
3 for certain.

4 Q Okay. RDI? Are you familiar with a  
5 company that goes by --

6 A I know there is a company called RDI. I  
7 don't know much -- much about them.

8 MS. LIGON: Okay.

9 I'd like to have this marked Exhibit 2,  
10 please.

11 (Craver Deposition Exhibit No. 2  
12 was marked for identification.)

13 BY MS. LIGON:

14 Q Okay.

15 Mr. Craver, I'm handing you what has  
16 been marked Exhibit No. 2.

17 Would you tell me what it is, please?

18 A It's an agreement between Response  
19 Dynamics, hereafter called the agency, and blank,  
20 the client.

21 Q Okay.

22 Mr. Craver, would you please carefully

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1 read that agreement, and using this yellow  
2 highlighter, would you identify what, if any,  
3 provisions of the contract are not usually and  
4 normally included in contracts in the direct mail  
5 industry?

6 I'm sorry, Mr. Craver. Please assume  
7 that the client here is a political committee,  
8 political action committee.

9 A I will.

10 (Pause)

11 I'm glad they're so interested in  
12 democracy. Okay.

13 Q Okay.

14 A Yes. All right.

15 Q Okay.

16 Mr. Craver, starting from the top of the  
17 agreement, and considering each area that you have  
18 highlighted, one at a time, would you please first  
19 identify the area that you're referring to and  
20 then explain how it differs from the usual and  
21 normal practices in the direct mail industry?

22 A All right.



1 Under article four, agency's,  
2 compensation, "The agency shall receive  
3 compensation of 25 percent of cost for  
4 solicitation by telephone."

5 Normally not in their -- I don't think  
6 it's particularly unusual or untoward. It's  
7 something I've never seen. The compensation of  
8 \$50 a thousand is -- I have seen that. It's  
9 normal. It is not limited in quantity, so  
10 apparently it runs for whatever -- for whatever  
11 quantity.

12 4E: "The Agency or its agent shall  
13 receive a commission of 20 percent of the standard  
14 list rental charge and/or exchanges made directly  
15 to organizations and a 40 percent commission on  
16 list rentals placed to other brokers or agencies,  
17 out of which the agency will pay the other  
18 broker's or agencies' fees."

19 This is -- this is highly unusual. The  
20 -- the normal practice in the -- in the list  
21 rental business is that if an agency is also  
22 serving as -- as a -- a broker, it -- it splits

1 the commission with -- with other brokers. It  
2 does not add an additional 20 percent. It does  
3 not double the commission and then pay the other  
4 -- the other broker.

5 I've never seen one like this.

6 Item -- article six, "Confidentiality.  
7 The Client shall hold in confidence all financial  
8 matters in connection with this contract,  
9 specifically including the Agency's compensation.  
10 It is agreed, however, that financial information  
11 can be provided by the Client to governmental  
12 agencies upon request of" -- of -- "upon request  
13 of a formal request from a government entity. The  
14 Client shall immediately notify and provide the  
15 Agency a copy of any such formal request and the  
16 information provided by the Client."

17 I have -- I have not seen a clause like  
18 this in a fund-raising contract. It -- I would  
19 consider it highly unusual.

20 "This agreement shall become effective  
21 April 1986 and shall continue in force for a  
22 period of 5 years unless sooner terminated --"

1 "unless sooner termination as provided herein."

2 This is -- this is a long period for a  
3 -- unusually long period for a fund-raising  
4 contract in my -- in my experience. Particularly  
5 given the fact that the termination -- notice of  
6 termination is 150 days, so it's a half-year  
7 termination. Unusual.

8 Q Okay.

9 A "Upon termination of this Agreement the  
10 Agency shall assign to the Client all of its  
11 rights and contracts, agreements, arrangements or  
12 transactions made with third parties for its  
13 account, effective on the date of termination or  
14 on such other date as may be agreed upon by the  
15 parties; and the Client shall assume all  
16 obligations and hold the Agency harmless for all  
17 liability thereunder."

18 I have -- I have never seen something  
19 like this either, which -- I don't infer anything  
20 from it. It's just that it's unusual that a  
21 client can't assign something but an agency can;  
22 and it's just -- frankly, the detail in this, I

1 have never seen in most agreements. It is  
2 puzzling. Puzzling to me, at least.

3 "In the event a fund" -- "a direct mail  
4 fund raising" -- this is article 7E.

5 "In the event a direct mail fund raising  
6 project and/or a package originated by the Agency  
7 is delayed in mailing for fifteen (15) days or  
8 more by directions or instructions of the Client,  
9 it is expressly agreed and understood that the  
10 project and/or the package can, at the option of  
11 the Agency, be placed by the Agency with another  
12 party without any liability to the Client  
13 whatsoever. The Client hereby waives and releases  
14 any rights it may now or in the future have in or  
15 to said project and/or package. In the event of  
16 the exercise of this option by the" -- "by the  
17 Agency --"

18 This is unusual in a -- in an  
19 advertising and fund-raising context, because the  
20 -- the -- the customary trade practice is to  
21 develop creative work for specific application to  
22 the client, and how this would be salable to a

1 third party, I don't know, but it's -- it's very  
2 unusual.

3 Article ten, "Assignment and delegation.  
4 Client may not assign any rights or delegate any  
5 duties hereunder without the prior written consent  
6 of the Agency. The Agency may assign its rights  
7 or delegate any duties hereunder including  
8 Agency's right to use any list created under this  
9 agreement arising from the services performed  
10 under this Agreement."

11 The -- I find this unusual in that the  
12 rights run to the agency, not to the client. The  
13 client, as a matter of contract, gives up its  
14 rights. This -- this is not usual in -- in -- in  
15 any political context I'm familiar with, and  
16 certainly it is not usual in the fund raising --  
17 direct mail fund raising. The -- the contract  
18 generally, but the -- the things that I -- the  
19 areas I highlighted are -- are highly unusual.

20 (Discussion off the record)

21 BY MS. LIGON:

22 Q Okay.

1 Mr. Craver, you just mentioned that the  
2 contract in general is unusual, and the areas you  
3 highlighted are highly unusual. Would you focus,  
4 please, on provision number 8, disposition of  
5 property and materials, and would you comment on  
6 whether in particular that whole provision there,  
7 everything falling under number 8, is unusual in  
8 the direct mail industry?

9 A Yes. It -- it is -- the -- it goes back  
10 to the point I raised on the -- on item 7E: The  
11 turning over of creative work if not used by the  
12 clients to some third party within a 15-day  
13 period. If not used within 15 days.

14 The -- the -- normally in the  
15 advertising and fund-raising industries, the  
16 product, which is the creativity, the art and the  
17 other materials that go with it, are the -- are  
18 the product of the -- of the client.

19 It is a -- it is a unique product  
20 because of the unique nature of -- of clients, and  
21 -- so this makes it unusual to transfer that.

22 It's like a -- you know, a custom-made



1 suit. It's not easy to -- to fit it elsewhere.

2 Q Okay.

3 And, Mr. Craver, would you comment on  
4 this particular part of the section under number  
5 8?

6 "The Client, its officers and/or  
7 representatives shall not during the term of this  
8 Agreement, or at any time subsequent thereto,  
9 rent, exchange, delegate, sell or otherwise  
10 provide any list(s) created under this Agreement  
11 to any third party for any reason whatsoever  
12 without the prior written approval of the Agency."

13 Is that usual in the industry to be  
14 included in contracts?

15 A It's -- it's unusual, and, frankly,  
16 outrageous.

17 The -- the -- the capacity of a client  
18 to control its own data, its own donors, is  
19 fundamental to the process of fund raising,  
20 whether it's a political committee or a charity,  
21 and the -- the whole -- the whole issue of what  
22 fund raising is and the fact that the public is

1 involved with giving money and -- comes into play  
2 here.

3 I mean, the -- the -- this is highly  
4 unusual.

5 Q Okay.

6 A It just -- it is of such a -- of a  
7 controlling nature that it -- that it's -- it's  
8 upsetting to look at, frankly.

9 Q Okay.

10 Mr. Craver, you may have just stated it,  
11 but how would you, in an overall way, characterize  
12 the relationship created under this contract?

13 A I would characterize it as one of jailer  
14 and prisoner, frankly. The -- there is -- there  
15 is no substantial freedom for the client. There  
16 is every freedom for the -- for the agency. It is  
17 a -- it is a quite one-sided contract.

18 Q Mr. Craver, would you please focus now  
19 on provision 4A of the contract? And we talked  
20 earlier about reducing fees in an effort to reduce  
21 the client's debt.

22 A Right.

1 Q And if this particular agreement was  
2 amended in 1989 --

3 A Yes.

4 Q -- reducing the charge that you see in  
5 4A --

6 A Yes.

7 Q -- to the sum of \$35 per 1,000  
8 fund-raising packages, would that fall into a  
9 usual and normal practice in the direct mail  
10 industry?

11 A Yes. Yes.

12 What is -- what is -- what is unusual  
13 here, at least in my experience, is the size of  
14 the -- the amount of the compensation per thousand  
15 pieces. It strikes me as extraordinarily high,  
16 but leave that out. It would be normal to adjust  
17 a fee to enable a client to mail more mail or to  
18 otherwise make a net -- make a net income.

19 What -- what I would wonder about is,  
20 was it -- was it reduced to mail -- was it reduced  
21 to -- for the purpose of mailing more mail, and  
22 was the purpose of mailing more mail, to produce

1 money for the committee, or was it to produce a  
2 list -- additional commissions under the list  
3 brokerage agreement, which is item 4E, and -- and  
4 benefit the -- benefit the contractor?

5 That's a -- that's a question that has  
6 to be asked ethically in fund raising anytime  
7 there are fees based on volume. Who is the  
8 beneficiary of the -- of the action that increases  
9 the volume? Is it the client, or is it the agency  
10 whose fees are based on -- on volume? And that's  
11 the -- that's the question.

12 It may well be possible, for example, to  
13 -- to mail twice as many pieces of mail if -- if  
14 you're only tacking on a \$35 fee rather than a \$50  
15 fee, because of the way costs in the mail -- in  
16 mail work, in which case the contractor in this  
17 instance would be getting a 30 percent increase in  
18 fee by lowering the fee, because they could mail  
19 several million more pieces and get the additional  
20 \$35 a thousand.

21 So the reason these type of arrangements  
22 are -- are difficult in -- in fund raising is that

1 the motivation is never clear on its face about  
2 the benefiting the client. Does it inure to the  
3 client's benefit? Does it inure to the  
4 contractor's benefit? Can't tell -- can't tell  
5 from this, but it -- volume -- volume-based  
6 contracts in this business are always suspect. To  
7 me, at least, because of that.

8 Q Mr. Craver, would \$35 per 1,000  
9 fund-raising packages, in the context of these  
10 compensation provisions, would that be a usual and  
11 normal charge for these services in 1989?

12 A It would be within the range of -- of  
13 usual.

14 Q Okay.

15 Mr. Craver, how many different direct  
16 mail contracts have you seen?

17 A Over the years?

18 Q Yes.

19 A Hundreds.

20 Q Okay. Okay.

21 What criteria do you use to judge when a  
22 contract has been a success?

1           A       The contract has been a success if the  
2 client has -- has met their goals and if the  
3 contractor has -- has made a -- a profit meeting  
4 them.

5           Q       Okay.

6                   (Discussion off the record)

7           MS. LIGON: Mr. Craver, you're entitled  
8 to read and sign the transcript of this deposition  
9 when it's completed. You may, however, at this  
10 time, waive your right to read and sign it if you  
11 so desire.

12           THE WITNESS: I'll waive it.

13           MS. LIGON: Mr. Craver, I'm reserving  
14 the right to recall you as a witness if, upon  
15 review of the record, it's determined that your  
16 testimony is further needed.

17           We are now adjourned.

18                   (Whereupon, at 12:03 p.m., the  
19 deposition of ROGER M. CRAVER was  
20 adjourned.)

21                   \* \* \* \* \*

22                   (Signature waived)



CERTIFICATE OF NOTARY PUBLIC  
DISTRICT OF COLUMBIA

I, Thomas R. Brezina, the officer before whom  
the foregoing deposition was taken, do hereby certify  
that the witness whose testimony appears in the  
foregoing pages was duly sworn; that the foregoing  
transcript is a true and accurate record of the  
testimony given by said witness.

I further certify that I am not related to  
the witness or counsel; that I have no interest in  
the outcome of this case.

Given under my hand this 24th day of  
December, 1995.



NOTARY PUBLIC

My Commission Expires:  
October 14, 1998

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WASHINGTON, D C 20463

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