



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 4 3 08 PM '96

**SUBMITTED LATE
AGENDA ITEM**

for Meeting of: MAR 7 1996

MEMORANDUM

TO: The Commission

FROM: Scott E. Thomas
Commissioner *ST*

SUBJECT: Draft AO 1996-5 (Jay Kim for Congress)

DATE: March 4, 1996

I would substitute the following for footnote 4 on page 4 of the General Counsel's draft:

The Commission has interpreted the statute to allow amounts equal to mandatory contribution refund amounts to be disgorged to the United States Treasury, in lieu of making payments to the entity that unlawfully made the original contribution. See MUR 3460.

To the extent that Advisory Opinions 1989-5 and 1984-52 hold that payments equal to the amounts of previously accepted unlawful contributions may only be made to the entity that is determined to have been the source of the unlawful contributions, those opinions are hereby superseded. Refund equivalent payments to the United States Treasury comport with the underlying reason for the refund rule of 11 CFR 103.3(b)(2). That is, to place the political committee in nearly the same financial position that would have existed if, knowing the unlawful source of the contributions at the outset, it had returned them within 10 days after receipt. 11 CFR 103.3(b)(1).